

Fair Use Guidelines for Educational Multimedia

The Fair Use Guidelines for Educational Multimedia set forth the following limitations with respect to using the copyrighted works¹ of others for educational multimedia projects², including the use of these educational multimedia projects in online courses³:

(the following text is copied from the CONFU Fair Use Guidelines for Educational Multimedia⁴):

Limitations— Time, Portion, Copying AND Distribution

The preparation of educational multimedia projects incorporating copyrighted works for educational multimedia projects, and the use of such projects, are subject to the limitations noted below.

Time Limitations

Educators may use their educational multimedia projects created for educational purposes under these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production.

Portion Limitations

Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of a multimedia project created under these guidelines.

Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project created under these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

Music, Lyrics, and Music Video

Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under these guidelines. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under these guidelines. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under these guidelines.

Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

Copying and Distribution Limitations

Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted hereunder, there may be no more than two use copies only one of which may be placed on reserve.

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described herein.

Examples of When Permission is Required OF WHEN PERMISSION IS REQUIRED

Using Multimedia Projects for Non-Educational or Commercial Purposes

Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines

Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed herein.

Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines

Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described herein, without obtaining

permissions for all copyrighted works incorporated in the program.

Important Reminders

Caution in Downloading Material from the Internet

Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

Attribution and Acknowledgement

Educators and students are reminded to credit the sources and display the copyright notice © and copyright ownership information if this is shown in the original source, for all works incorporated as part of the educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses described herein. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered "incorporated" if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

Notice of Use Restrictions

Educators and students are advised that they must include on the opening screen of their multimedia program and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the multimedia fair use guidelines and are restricted from further use.

Future Uses Beyond Fair Use

Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

Integrity of Copyrighted Works: Alterations

Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

Reproduction or De-compilation of Copyrighted Computer Programs

Educators and students should be aware that reproduction or de-compilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information is subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

The following text was copied from the Preamble:

Fair use is a legal principle that defines the limitations on the exclusive rights of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for non-commercial educational uses. These guidelines apply only to fair use in the context of copyright and to no other rights.

There is no simple test to determine what is fair use. Section 107 of the Copyright Act sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a "fair use":

1. the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes,
2. the nature of the copyrighted work,
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and
4. the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the participants' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may nor may not be fair use. The participants also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain--such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions--or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

¹ The copyrighted works used under these guidelines are lawfully acquired if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for educational purposes in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions.

² The Fair Use Guidelines for Educational Multimedia define educational multimedia projects created under these guidelines as those that incorporate educators' (or students') original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text materials, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia programs for their own teaching tools in support of curriculum-based instructional activities at educational institutions. Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

³ The Guidelines state that educators may perform and display their own educational multimedia projects created under these guidelines for curriculum-based instruction to students in the following situations: for face-to-face instruction, assigned to students for directed self-study, for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.

⁴ The Guidelines specifically state that no copyright protection of these guidelines is claimed by any person or entity. Please note that the text of the preamble is copied towards the end of this document.