

# **COPYRIGHT-COMPLIANT INSTRUCTION AIDS**

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# **THIS IS AN EDUCATIONAL PRESENTATION**

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**This presentation is not intended to and does not render a legal opinion and is not at all a substitute for legal advice available through the Attorney(s) serving our University or you (personally).**

**Thanks to Prof. Linda K. Enghagen, J.D., of the University of Massachusetts at Amherst.**

# Instruction & Copyright: The Linkage

- The major copyright-fair use dispute today concerns the preparation of course packs by university faculty for use by their students ... course-packs prepared & mounted on university electronic course-management systems or individual faculty websites.

See, “Complaint” in *Cambridge University Press v. Patton*, U.S. District Court for Northern District of Georgia (2008- ) [“Georgia State Case”].

- Protecting only the public university, the doctrine of “sovereign immunity” prevents *neither* faculty from being sued for monetary losses & fees resulting from their personal copyright violations *nor* university administrators from being sued to end practices that permit or suffer infringements of copyright by faculty, Though certain “good faith” exemptions may limit said liability.

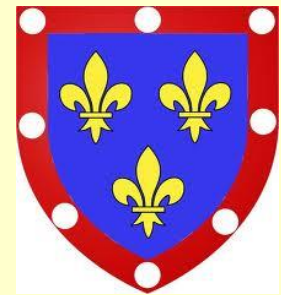
# Copyright vs. Fair Use

- **Copyright:** Ownership of “original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated,” \* e.g., literary, musical & dramatic works, motion pictures and sound recordings. 17 USC 102(a).



\* Copyright attaches as soon as a work is created. 17 USC 302(a).

- **Fair Use:** “The fair use of a copyrighted work, for purposes such as criticism, comment, news reporting, **teaching, scholarship, or research**, is not an infringement of copyright.” 17 USC 107.



- **Neither right is absolute.**  
**Each limits & is limited by the other.**

# Fair Use: The Key to Copyright-Compliant Instruction Aids

- **Rule:** “Fair Use” authorizes the faculty of a university to make some use of the works of other authors for educational purposes without obtaining those authors’ permission to do so ... uses that are essential to teaching-and-learning, scholarship, research and other non-profit “educational purposes.”
- **Application:** Though easily stated, “fair use” is an “equitable rule of reason” that cannot be applied mechanically ... its employment requires judicious reflection.

# **Louisiana Tech Policy No. 7115 ...**

**University faculty and staff may want to use additional materials to supplement research and teaching.**

**Copying of materials must comply with copyright laws.**

**‘The fair use of a copyrighted work is not an infringement of copyright.’ 17 USC 107.**

# **A Bridge between Policy & Practice Is Needed ...**

**A clear, meaningful procedure through which a faculty member or administrator can determine with reasonable accuracy whether or not an instructional aid – in-print or on-line ... on campus or for distance education – in fact makes “fair use” of any copyrighted material incorporated into it.**

# Guidance Is Available –

## The Ugly, The Bad & The Good ...



**Publishers' Bogeyman** \* = All's Fair!

It's for educational purposes! ... **WRONG!!**



**Rule of Risk Avoidance** = Nothing's Fair!

Just pay for it! ... **CAPITULATION!!**



**The Logic of Fair Use** = Think! Prudently

employ on a work-by-work basis the principles of  
“fair use,” a common sense “rule of reason”

developed & applied by the courts ... **FOLLOW IT!!**

\* A straw man built from a gross exaggeration of GSU's pre-2009 e-reserve policy. Compare *Cambridge University Press* 2008 “Complaint” with 2012 “Order.”



# The Bogeyman ... What NOT to Do!



Rougarou

**“Policy.” “All nonprofit educational use, no matter how much and no matter how long it’s used, is fair.”**

- **Application:** Merely re-use copyright-protected works ... by posting portions of books & articles well in excess of 100 pages each and ‘compilations of material surpassing even the thickest printed coursepack’ ... and provide open web access to the electronically mounted materials.

See, “Complaint” in *Cambridge University Press v. Patton*,  
U.S. District Court for Northern District of Georgia (2008- )

**Note:** Trial Court found only 5 of 99 instances complained of that infringed on copyrights (all good faith errors); open access was service error.

# Risk Avoidance ... Capitulation!



- **Rule:** Subscribe to a clearinghouse licensing service, *such as* has been developed by the Copyright Clearance Center (at [www.copyright.com/](http://www.copyright.com/)).
- **Rationale:** Reliance on fair use always involves some risk & universities are prone to be risk averse, so use a licensing clearinghouse & avoid all risk, *especially*, now that publishers are threatening to sue & suing universities for alleged copyright infringement.

Georgia Harper, University of Texas at Austin.

# Logic of Fair Use ... Follow It !!

- **A Rule of Reason:** Prudently employ the principles of “fair use” each time you incorporate another’s work into an instruction aid ... “If you are reusing the work for its original purpose, you would be stealing if you didn’t get permission to use it. If you are repurposing the material for a specific purpose and are using only what you need for that purpose, the copyright holder doesn’t have a legal objection to your use.”
- **Rationale:** Fair use is a right, the most important tool in copyright for educators ... a common sense “rule of reason” federal courts developed & continue to apply.



Pat Aufderheide & Peter Jaszi, *Reclaiming Fair Use* (U. of Chicago Press, 2011).

# Fair Use ... Section 107

“The **fair use** of a copyrighted work, **including** such use by reproduction in **copies** or ... by any other means [or format], for purposes such as criticism, comment, news reporting, **teaching** (*incl.*, multiple copies for classroom use), **scholarship**, or **research** is **not an infringement** of copyright.

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include: (1) The purpose and character of the use, including **whether such use is** of a commercial nature [*i.e.*, less “fair”] or is **for nonprofit educational purposes** [*i.e.*, more “fair”]; (2) The nature of the copyrighted work [“factual (+) vs “creative” (-)]; (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.” 17 USC 107.

- Neither the opening “purposes” list nor the following “factors” list is exclusive. There may be other non-infringing uses-and-factors to be considered in any particular case.

*E.g.*, “Parody” has been added to the list of non-infringing uses (as a form of criticism & comment), *Campbell* (US Supreme Court, 1994);

After §107, 17 USC notes certain specific forms of fair use.

- Course-Pack Issue = Factor 1 vs 4 (if use “transformative,” ok).

# Logic of Fair Use ... Procedure (to begin)

## ▪ Is Copyright an Issue?

Not if the existing work is yours, out-of-copyright, a U.S. government publication or on the open web (*i.e.*, posted by the owner for all to use, **not** merely on the Internet without owner's permission ... **though** it may be linked to, until taken down).

## ▪ Is Existing Work Simply Being Copied?

**Don't Use It!** 17 USC 107 [Factor 4: "Market Effect" very harmful.]

*E.g.*: A textbook intended for students, such as those in your class;

An educational software program sold in association with a textbook (in-print or on-line) created for college students;

A DVD created/sold specifically for limited distance education/online use.

# Logic of Fair Use ... Procedure (cont. 2)

- Is the Existing Work Being Repurposed and Transformed from Its Original Use to a Teaching Use? \*

**IF for criticism, comment, parody, scholarship, research or other educational purpose**

(e.g., to illustrate a point, stimulate discussion, etc.) , **Use It.**

17 USC 107 [Factor 1: "Purpose of Use," Educational.]

***E.g.:* (1) Works of several modern authors; (2) early, mid-life & mature works of a modern artist; (3) articles showing evolution of an hypothesis to fact; (4) current articles showing differing opinions on a contemporary theory ... each for purposes of comparison & comment as part of an anthology prepared/tailored by you (*i.e.*, not merely a copy of an earlier anthology).**

\* **Essence of Fair Use:** Building on the current to create new, for nothing is truly new.  
*Campbell v. Acuff-Rose Music* (US Supreme Court, 1994).

# Logic of Fair Use ... Procedure (cont. 3)

- **Is Only So Much of Work Being Used as Is Needed for Its Repurposed Use?**

There is no set “this amount & no more” rule.

**IF** pertinent to topic, Use ...

“All” may be okay, IF required satisfactorily to present/illustrate concept, stimulate discussion & the like.

**DON'T be over ambitious ...**

Use only the amount sufficient to present the concept.

17 USC 107 [Factor 3: “Amount & Substantiality of Portion Used.”]

**Also: Provide Attribution & Note any Copyright Declaration in Work used ...**

**Courtesy & Intellectual Honesty = Good Faith!** *Campbell.*

# Logic of Fair Use ... Procedure (cont. 4)

## ▪ Is Market Harm Even Possible?

**If Not, Use the Earlier Work ... to educate only.**

17 USC 107 [Factor 1 “Nonprofit Educational Use” high;  
Factor 4 “Market Harm” low to nil].

- **Audience ...** If students are not members of the intended audience for a prior work, the work is repurposed when used to educate those students.

*E.g.*, article in a professional journal targeted for practitioners, *such as* biologists, historians, mathematicians or teachers.

- **Availability ...** If prior work is unavailable for current use, use it for nfp educational purposes.

*E.g.*, works out-of-print, orphaned or on back-order (only while so unavailable); but not works merely unpublished.

*Cf.*, 17 USC 107 Preamble; 17 USC 108(e); *Harper & Row Publishers* (USSC, 1985).



# Logic of Fair Use ... Procedure (cont. 5)

- Are Course Materials Available Only to Enrolled Students?

Must Be, always ...

Particular students, *not* the World, are being educated!

- Are course materials removed, reviewed, revised & remounted for next class?

Must Be, each & every Quarter ...

It is not “education” if the information is not current!

17 USC 107 [Preamble: Educational Purposes. ]

[Factor 1: Educational Purpose. ]

[Factor 4: Limited Market Effect. ]

[Factor 3: Amount Used (reinforcing 1 & 4).]

# Non-Print Media ... Sight & Sound

- **Audio, Visual & A-V Formats ...**  
Rights of “display” & “performance” belong to copyright owner. 17 USC 106.
- **Exemptions for Educational Purposes ...**
  - **Face-to-Face Instruction ...** any work may be displayed “during teaching activities” in any “nonprofit educational institution” [*without any limitation* on the amount of the work that may be displayed]. 17 USC 110(1).
  - **Distance/On-line Instruction ...** in “accredited nonprofit educational institutions” (only), audio-visual & visual works may be displayed only in “reasonable & limited portions;” other works ... “in an amount comparable to” that in “a live classroom session.” 17 USC 110(2), *i.e.*, the “TEACH Act.”

And, in each instance must have been “lawfully” made/acquired.

# Non-Print Media ... Sight/Sound (cont.)

- **Digital Millennium Copyright Act ...** Forbids circumvention of copyright protection measures in digital media, *such as* CDs & DVDs, even if you own the CD, DVD, *etc.* and your purpose is to make “fair use” of the content. 17 USC 1201(a)(1)(A).
- **HOWEVER ...** “Short portions” of motion pictures on protected DVDs may be incorporated by “college & university professors” into “new works for the purpose of criticism & comment” to serve “educational uses,” as well as for “documentary filmmaking” & “noncommercial videos.”

Librarian of Congress Rule [37 CFR 201.40(b), 7/1/13] & 17 USC 1201(a)(1)(C)-(D).

**Note:** The DVD must have been “lawfully made & acquired.”  
The Rule includes “film & media studies students,” *only*.  
The Rule will expire in 3 years, *unless* renewed (likely).

# For Further Guidance ...

- **“Guidelines.”** Rules defining “fair use” in terms of “safe” *minimums*, set by single institutions or groups that do not represent the entire creative community affected ...

Helpful, but usually not robust exercises of the logic of fair use, *such as* –

- **“Faculty Guide” & “Fair Use Checklist” ...**  
to know what’s safe, not to do all may do.

Copyright Information Center at Cornell University,  
<http://www.copyright.cornell.edu/>.



**Note:** Cornell’s “Guidelines” were adopted in “collaboration” with the Association of American Publishers, *i.e.*, under threat of lawsuit (Cornell being a private university).

A Cornell-like “Rule of 10’s” for supplemental e-reserves was rejected by the Court of Appeals in *Cambridge Press* (“Opinion,” 17 October 2014) as contrary to Fair Use Factor 3, which sets no “this amount is always fair” rule.

# For Further Guidance (cont. 2) ...

- **“Guidelines”** (*examples cont.*) ...

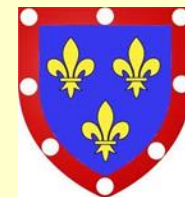
- **“Fair Use Guidelines for Educational Multimedia”** ... to be “sure” safe.

From Conference for Fair Use (CONFU) ... proposed; not adopted.  
<http://copyright.lib.utexas.edu/ccmcguid.html>.

**Noted by** UL System Attorney as ‘a guide found on the Web.’ 11/09.

- **“Fair Use & Copyright”** ...  
to follow the **“Logic of Fair Use”** & **“Best Practices”**

See, Center for Media & Social Impact at American University  
(School of Communication)  
<http://www.cmsimpact.org/> (“Programs - Fair Use”).



*E.g.*, **“Code of Best Practices in Fair Use for Academic & Research Libraries”** (Association of Research Libraries, Jan. 2012).  
<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf> .

## **For Further Guidance (cont. 3) ...**

- **“Copyright Information” on the University Library’s WebSite ...**

<http://www.latech.edu/library/services/copyrt.html>

**Including:**

**“Instruction Aids in Compliance with Copyright” ...**

**A Tutorial with Questions & Answers**

<http://www.latech.edu/library/pdfs/copyright.pdf>.

- **ALA Copyright Slider ... to determine if a work is in-copyright or not. <http://librarycopyright.net/digitalslider/> .**

# Additional Guidance: Permissions ...

To pay for a work if merely copying it or  
to avoid all risk:

## ■ For Print Rights ...

- **Copyright Clearance Center**  
at <http://www.copyright.com/> (“Academia”).
- **The Publisher ... begin at its WebSite.**

## ■ For Performance Rights ...

- **Swank Motion Pictures**  
at <http://www.swank.com>.
- **The Distributing Company ... or google for info.**

# QUESTIONS-&-ANSWERS: #1

**As has been your practice in the past, for each session in your survey course this quarter (arts, humanities or sciences), you pair a chapter or work in the textbook you're using ... purchased by your students new through the University Bookstore or used through any one of several used-book markets ... with a current work (some short, some long, some from the University Library's print book-&-journal collection, some from certain of the Library's full-text databases, some from your books-&-journals, and some from other collections) ... copied and mounted on your electronic course-management site for the class (BlackBoard, Moodle, etc.) ... so your students can compare-contrast, comment upon, and otherwise learn from the juxtaposition of different styles, thought and the like, distinguished by author and/or time.**

**Depending upon how busy you are in the weeks leading up to a particular quarter in which you teach the course, you are more or less attentive (1) to how much of an existing, current work you use to illustrate or stimulate discussion on the point being taught through use of the work and (2) to updating and refreshing the content on your electronic course-management site ... though**



## Q & A: #1 (cont.)

**you do make sure at the end of each quarter that your students no longer have access to your site for the then-completed course.**

**Certain publishers have learned of your class-management site and sent the University a “take down” letter from their attorneys, alleging that you have violated the publishers’ copyrights in the works on your site.**

**Have you?**

**NO ... Fair Use:**

Repurposing/transforming one or more existing works from original use to a teaching purpose ... *such as*, comment, criticism, parody, research, scholarship, or other educational use (*e.g.*, to illustrate a point, stimulate discussion or teach news-reporting) ... is “always” fair

## Answer: #1 (cont. 2)

use of the prior work, so long as [i] carried out in fact to repurpose (not merely to copy) the earlier work(s) and by using [ii] no more of each work than is reasonably needed to serve the intended educational purpose (which may in certain instances be an entire work) and [iii] no more works than the more capable and interested students in the class can reasonably be expected to read, process, and understand.

That existing works are digitized, in part or whole, and mounted on an electronic course-management site to supplement a textbook purchased by students taking the course emphasizes that the digitized works have been repurposed from original to educational use ... a fact that counters any negative conclusion that might be drawn from occasional poor editing of prior works used or occasional inattention to the freshness of a course-site, *especially*, when past students are always barred from future access to the site and its contents.

If an existing work is in fact being transformed from original to an

## Answer: #1 (cont. 3)

educational purpose when duplicated and mounted on an electronic course-management site, it is of little importance whether or not the prior work is [i] under or out-of copyright or [ii] from the university's library, the faculty member's personal collection, or elsewhere. Only when an existing work is merely being duplicated does its copyright status need to be established, so the faculty member using same knows whether or not to obtain the author/publisher's permission to use the work, by payment or simple consent ... a permission, it should be noted, that is rarely required if the work is available through and taken from a full-text database in the university's library (because such permission usually comes with the database, since the course-management site merely provides students more convenient access to information their university has already paid for them to receive).

### **Note:**

Though publishers reduce fair use analysis to numbers and quantities

## Answer: #1 (cont. 4)

... *i.e.*, small amounts or portions of in-copyright works that may be copied (*such as*, 1 or 2 pages or chapters of a book or one article or 5% of a journal's annual run) ... federal appellate courts have for the past twenty-five years clearly stated that there is no hard-and-fast limitation on the quantity of a prior work that may be fairly used in a subsequent work, because "the extent of permissible copying varies with the purpose and character of the use" ... depending upon how much is needed to illustrate a point, stimulate discussion, and the like.

# QUESTIONS-&-ANSWERS: #2

**You receive from a friend at another university a pre-publication report on a subject of interest to you ... shared with her/him for review by one of her/his colleagues.**

**You read the report, finding the survey instrument used, data obtained, and conclusions reached of great interest indeed and concluding not only that the report will be intriguing to many in your Department but will also undoubtedly be published in THE professional journal for the author's and your discipline.**

**1. Believing that others in your and related Departments will find it of interest ... in general or for research projects, in process or in planning ... you photocopy the report and distribute it among them (a total of 15, somewhat to your surprise).**

**2. Believing the survey instrument noted in the report could be used to move along one of your projects that has bogged down, you direct one of your graduate assistants to submit a proposal on how the instrument could be so used ... which he/she does.**

## **Q & A: #2 (cont. 2)**

**3. You consider incorporating the report into your undergraduate course covering its general subject-matter but decide to wait until it appears in published form before presenting it to students as established fact. Instead, you copy and mount the unpublished report on your electronic course-management site for your class ... as an example of how a well tailored survey instrument can produce material, relevant data.**

**One of your colleagues congratulates the author on her/his report, noting your forwarding a copy to her/him. You receive a letter from the author, alleging that you have violated her/his copyright in the report.**

**Have you?**

# Answer: #2

1. **YES ... Copyright infringement.**

2. **Not yet.**

3. **NO ... Fair Use**, in the limited context of this illustration.

1. Duplicating a work under copyright ... especially, one in pre-publication form ... principally to share it with individuals in the group for whom the work is primarily intended and who are expected to pay to read/see/hear it violates the copyright held by the author or transferred to her/his publisher. That all of the recipients are educators or researchers at a public university and that some may use the copy of the work received to further scholarship or research does not overshadow the fact that they would purchase it, when available, if they found they needed it for their scholarship or research.

**Note:** Copyright attaches to a work automatically upon its creation and, in general, continues for the life of the author plus 70 years, but

## Answer: #2 (cont. 2)

may be not enforced until it is registered with the U.S. Copyright Office ... at which time and if the use was not “fair,” the infringer is liable to the owner for “actual damages” suffered by the owner (e.g., the profit the owner would have made from a sale of the work to the infringer) and for “any profits of the infringer that are attributable to the infringement.”

**Note:** No professor, instructor, or teacher is “ever” liable for “statutory damages” (\$200-\$150,000) or the owner’s “reasonable attorney’s fee,” so long as he/she had “reasonable grounds for believing that his or her use of the copyrighted work was a fair use.”

**2.** “Survey Instruments” are works protected by copyright, unless the protection has expired or been duly waived by the instrument’s author. “Survey Results,” however, are “facts” and, thus, not subject to copyright, though their presentation form is ... *such as*, the title and introductory & closing comments of the paper/report publishing same.



## Answer: #2 (cont. 3)

You must obtain permission from the author to use her/his survey instrument in your research project.

**3.** Sharing a work in-copyright with one's students as an example of a format, of how-to-do, of how-not-to-do, and the like ... for comment, criticism, or other educational purpose ... is a "fair use" of the existing work (whether published or not), transforming it into a purpose different from that of the prior work.

Copying a work for students simply as "the most recent" coverage of a topic or a particular author's "latest work" would infringe upon the author's copyright, or that of her/his publisher, unless the students are not the target audience for the work. *For example*, undergraduates are usually not the reading audience for a professional journal and, thus, not the readers its contributing authors intend to reach, so duplicating for one's students a work from a professional journal should not violate

## Answer: #2 (cont. 4)

the author/publisher's copyright. Similarly, graduate students are an audience in the making, individuals being taught to look for and use the literature of the profession they are being educated to join and, by being exposed to such literature, are encouraged to become upon graduation active, paying members of the target audience ... to the author/ publisher's future benefit.

### **Note:**

Since the students are not the target audience for the work, the “market harm” to the author/publisher is slight, while the “educational purpose” is substantial ... *i.e.*, §107 Preamble & Factor 1 out-balance Factor 4.

### **However:**

That students are not the target audience for the work may not resolve whether nonprofit educational use of a work prior to publication trumps an author's right to choose when a work is made public, though a very limited use for an audience well outside that targeted does seem “fair.”

# QUESTIONS-&-ANSWERS: #3

Several months ago, you received an instructor's edition of a textbook from its publisher, reviewed and selected it for one of your two-quarter courses, and ordered the book for your students through the University Bookstore.

1. A week before the beginning of classes, the Bookstore notifies you that the textbook is on back-order and should arrive for your students "within a week or two" ... so, from your instructor's edition, you duplicate the first three chapters and an historical time-line at the end of the book and mount them on the electronic course-management site for your class (for the first 2 weeks of class, plus week 3 for those students who work ahead).

During the second week of the quarter, the Bookstore tells you the books still can't be shipped "for another couple of weeks" ... so you copy and mount the next three chapters for your class.

Then, as week four ends, you are notified the textbooks will remain on back-order "for perhaps a few more weeks" ... so you duplicate and mount the next six chapters, through the end of the first half of the book, and cancel your order for the books this quarter.

## **Q & A: #3 (cont. 2)**

**2. As the quarter winds down, the Bookstore asks if you want to order the textbook for the second half of the course scheduled for the next quarter. You say, “No” ... and copy and mount on your electronic course-management site for the two-quarter class the second half of the textbook, chapters 13-24, as well as the several tables at the end of the book.**

**The textbook’s publisher has learned of your course-management site and sent a “take down” letter to the University alleging you have violated the publisher’s copyright in the work on your site.**

**Have you?**

**1. NO ... Fair Use.**

**2. YES ... Copyright Infringement.**

# Answer: #3

**1.** Duplicating a work under copyright merely as a substitute for the existing work usually violates the author's copyright. However, when there is no viable market for the work ... *such as*, when the work is out-of-print or is unavailable for timely purchase to fill an existing, immediate educational need ... to copy the work is to make fair use of it, since the "educational purpose" is great and "market harm" slight. In addition, duplication of factual information (without any commentary or any special format added to the facts by author or publisher) ... *e.g.*, a simple time-line or set of population statistics, is "always" fair ... since "factual works" are not products of "creative expression."

**2.** Duplication of a textbook for use in a course teaching the same subject-matter as the content of the book is "always" a violation of the owner's copyright in the work (with exception of unavailability, see *above*). The copying of factual information (only) ... *e.g.*, math tables or chemical reaction calculators ... for educational purposes is, however, "always" fair [a Factor 2, "nature of work," issue, see *above*].

# QUESTIONS-&-ANSWERS: #4

**In your opinion as an educator, there is no single textbook suitable for your “modern survey” course, so you prepare a full electronic course-pack for your students from existing works, or portions thereof, you judiciously select from the University Library’s collection of books, journals, and periodicals (in-print and on-line), from your personal collection, and from other sources and then mount them on your electronic course-management site for the class, digitizing those works not already in electronic format.**

**For the more ambitious students taking the course, you also support each class week with a supplemental reading list of one or two works per scheduled class (a total of 3-to-6 each week) ... some placed in the Library’s “On Reserve” section, some specifically linked to one of the Library’s full-text databases, and some copied and mounted on your course-management site for the class.**

## **Q & A: #4 (cont. 2)**

**1. On most class weeks, you mount on the course-management site six works ... usually but not always in abbreviated form (from a few pages, to a chapter or two, to all of a short work and, on occasion, to all of a “long” work) ... so your students can compare, criticize, and otherwise comment upon differing conclusions, ways of thinking, world views, writing styles, *etc.***

**2. For one week you download to the course site clips from each of three movies ... two from DVDs in the College of Liberal Arts’ audio-visual collection for its creative writing and performing arts programs and one from your personal collection ... and, after deactivating the encryption or scrambling feature in those so protected, mount one significant scene from each movie germane to the subject-matter of your course ... one more “true” to the subject-and-substance of the print work portrayed than not, one less so, and one not at all true ... so your students can**

## **Q & A: #4 (cont. 3)**

**compare, criticize, and otherwise comment on format, as well as different outlooks, styles, and the like.**

**You faithfully remove all content from your course-management site for this class at the end of the quarter it is taught (*such as* by in fact blocking access to all students who have taken the course) and review all works on the site before the next academic year in which the course is taught ... deleting older or less relevant works, adding current or more relevant ones, and otherwise updating and refreshing the course content.**

**Certain publishers and multi-media producers learn of your course-management site. The University has received a “take down” letter from their attorneys, alleging that you have violated the publishers/producers’ copyrights in the works on your site.**

**Have you?**



# Answer: #4

1. **NO ... Fair Use.**

2. **NO ... neither copyright infringement; nor DMCA violation**

1. Repurposing many existing works to educational uses over the length of an entire course is no less “fair” than repurposing one or a few works for one or a few classes within a course ... so long as [i] the existing works are in fact so transformed (not merely copied) and as, in the educator’s opinion (*i.e.*, in the exercise of her/his sound professional discretion as an expert in the subject being presented), [ii] no more of any work is used than reasonably needed to serve the intended educational purpose (which may in any particular instance be much or all of the work), and [iii] no more works are employed than the more capable and interested students in the class can reasonably be expected to read, process, and understand.

See, Answer to Question #1.

## Answer: #4 (cont. 2)

2. Though transforming audio-visual and other multi-media works from entertainment to educational purposes may make fair use of the existing works (*i.e.*, there is no copyright infringement), the Digital Millennium Copyright Act outlaws all circumvention of copyright protection measures in digital media, such as CDs and DVDs ... *including for “fair use”* ... unless the user has received an exemption from the U.S. Copyright Office (or received permission from the work’s owner). **Note:** If no ‘protective feature’ is present, the Act does not apply.

Since July 26, 2010, university faculty have had a limited exemption from the DCMA to circumvent copyright protection measures for the purpose of copying “short portions” of any “motion picture on DVD” and compiling them into new works for face-to-face & on-line educational activities ... so long as any DVD so used was lawfully made & acquired.

**Note:** “Fair use” as defined by §§107& 110(1) permits faculty to show some-or-all of an audio-visual work in face-to-face instruction. The TEACH Act permits one to show “reasonable & limited portions” on-line (as in distance ed).

# Instruction Aids

in

# Compliance

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