

Smaldino, S.E., Lowther, D.L., & Mims, C. (2019) *Instructional*

Technology & Media for Learning, Pearson
p. 16-18

Shared Writing Exercise 1.1

Copyright Concerns: Copyright Law

To protect the financial interests of the creators, producers, and distributors of original works of information and art, nations adopt copyright laws. **Copyright** refers to the legal rights to an original work. These laws set the conditions under which anyone may copy, in whole or part, original works transmittable in any medium. Without copyright laws, writers, artists, and media producers would not receive the compensation they deserve for their creations, the flow of creative work would be reduced to a trickle, and we would all be the losers.

Technology, especially the Internet, has made it much easier to copy from a variety of digital materials—text, visuals, audio, and video. All material on the Internet is copyrighted unless stated otherwise. In 1998, the Conference on Fair Use issued a report (Lehman, 1998) that, despite not being a legal document, provides a consensus view (until tested in a court of law) on use of copyrighted material.

You have a legal and ethical responsibility to serve as a role model for your students; therefore, use all materials in a professional and ethical manner. We also recommend teaching relevant aspects of copyright laws to your students, even very young students. If you are unsure what to do, ask for your school's copyright guidelines. Librarians and media/technology specialists at your school may be able to help you interpret the national guidelines. Ignorance of the law is no excuse!

Please note that the copyright information presented here is *not* legal advice. It is based on what the authors have read in the literature and online. For more information on copyright, refer to the Print Resources at the end of this chapter.

Educators and Copyright Law

What happens if an educator knowingly and deliberately violates copyright law? The Copyright Act of 1976 contains both criminal and civil sanctions. Possible fines for copyright infringement range from \$750 to \$30,000 per infringement. If it can be proven that the law was broken by willful intent, the fine may be raised to \$150,000. Willful infringement for private or commercial gain carries a possible fine of \$250,000 and up to 5 years in prison. Copyright violation is a serious crime.

Fair Use

Fair use provides an important copyright exception for teachers and students. Small portions of copyrighted works may be used in teaching when properly cited and noted that the materials are copyrighted and by whom. Although there are no absolute guidelines for determining what constitutes fair use in an education setting, the law sets forth four basic criteria for determining what is fair use:

- *Purpose and character of the use, including whether such use is for nonprofit educational purposes rather than of a commercial nature.* Using a copyrighted work for an educational objective is more likely to be considered fair use than using it for commercial gain or entertainment.
- *Nature of the copyrighted work.* If the work is for a general readership, such as a magazine or periodical not specifically designed for education, it would tend to support fair use in the classroom. Works of an entertainment nature, such as cartoons, movies, or music, are less likely to be considered fair use. If the work itself is educational in nature, a judgment of fair use may not be supported because of potential impact on sales.
- *Amount and substantiality of the portion used in relation to the copyrighted work as a whole.* Using a smaller amount of the total work is more likely to be considered fair use than using a larger amount.
- *Effect of the use on the potential market for or value of the copyrighted work.* Use that negatively affects potential sales of the original work weighs against fair use.

Until the courts decide otherwise, teachers and media professionals can use the fair use criteria to decide when to copy materials that would otherwise be protected. For example, if the school media center subscribes to a journal or magazine to which you refer students and you make digital slides of several graphics to help students understand an article, this would be fair use based on the following criteria:

- The nature of the work is general, and its audience (and market) is not predominantly the educational community.
- The character of use is nonprofit.
- The amount copied is minimal.
- There is no intent to replace the original, only to make it more useful to students in conjunction with the copyrighted words.

Seeking Permission to Use Copyrighted Materials

Aside from staying within the guidelines that limit but recognize our legal right to free use of copyrighted materials, what else can we do to ensure students have access to these materials? We can, obviously, seek permission from copyright owners and, if requested, pay a fee for their use. Certain requests will ordinarily be granted without payment of fee—transcripts for the blind, for example, or material to be tried out once in an experimental program. Permission is not needed for use of materials in the public domain—materials on which copyright protection has run out or materials produced by federal government employees in the course of their regular work.

In seeking permission to use copyrighted materials, it is generally best to contact the distributor or publisher of the material rather than its creator. Whether or not the creator is the holder of the copyright, the distributor or publisher generally handles permission requests and sets fees. If the address of the publisher is not given on the material, you can usually find it on the Internet.

When seeking permission:

- Be as specific as possible. For printed materials, give the page numbers and exact amount of print material you wish to copy. If possible, send along a photocopy of the material. Fully describe nonprint material. State how you intend to use the material, where you intend to use it, and the number of copies you wish to make.
- Remember that fees for reproduction of copyrighted materials are sometimes negotiable. If the fee is beyond your budget, do not hesitate to ask whether it can be lowered.
- If for any reason you decide not to use the requested material, make this fact known to the publisher or producer. Without this formal notice, it is likely to be assumed that you have in fact used it as requested and you may be charged a fee you do not actually owe.
- Keep copies of *all* your correspondence and records of *all* other contacts that you make relevant to seeking permission to use copyrighted instructional materials.

Another solution is to obtain “royalty free” collections of media. You can access collections of images and sounds that can be used in presentations or other products without payment of royalties using Internet resources. Many vendors now sell CDs that contain similar types of resources that you can share with your students for their productions. Be sure to read the fine print. What “royalty free” means varies from one collection to the next. In one case, there may be almost no restrictions on the use of the materials (such as materials found through Creative Commons); in another, you may not be allowed to use the materials in any kind of electronic product.

Term of Protection

The term, or duration, of copyright was changed by the Sonny Bono Copyright Term Extension Act of 1998. For an individual author, the copyright term continues for 70 years after his or her death. If a work is made for hire (i.e., by an employee or by someone commissioned to do the work), the term is 100 years from the year of creation or 75 years from the date of first publication or distribution, whichever comes first. Works copyrighted prior to January 1, 1978, are protected for 28 years and then may have their copyright renewed. The renewal protects them for a term of 75 years after their original copyright date.

Changing the Material’s Format

Even though you (or your school) have the capability to convert analog materials to a digital format, it is usually a violation of copyright laws and guidelines. The originators of copyrighted material are granted the sole right to make derivatives of their original work. For example, it is illegal to purchase an analog VHS video and convert it to a digital format. Likewise, you cannot convert copyrighted printed materials into a digital format.

Copyright law protects the format in which ideas are expressed (Becker, 2003). Teachers cannot make audio recordings of library books or textbooks for student use. One exception in the law permits the audio recording of books for use by students who are legally blind.



Check Your Understanding 1.6