

FAIR USE RULES OF THUMB

From the University of Texas System Office of General Counsel
<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm#top>

Interpret these conservatively. If you need to make a more extensive use of another's work than suggested by the appropriate Rule of Thumb, or if there isn't an appropriate Rule of Thumb, use the four-factor fair use test to determine whether the use is fair or requires permission.

Other Exemptions

Library's Special Rights

Our libraries are authorized to exercise special rights in addition to fair use. These rights are described in Section 108 of the copyright law and include:

- archiving lost, stolen, damaged or deteriorating works
- making copies for library patrons
- making copies for other libraries' patrons (interlibrary loan)

Performances and Displays in Face-to-Face Teaching and Broadcasts

Educational institutions and governmental agencies are authorized to publicly display and perform others' works in the course of face-to-face teaching activities, and to a limited degree, in broadcasts. These rights are described in Sections 110 (1) and (2), respectively, of the copyright law.

RULES OF THUMB FOR COURSEPACKS

The Classroom Guidelines that were negotiated in 1976 can provide helpful guidance and we recommend that you read them.

1. Limit coursepack materials to

- single chapters
- single articles from a journal issue
- several charts, graphs or illustrations
- other similarly small parts of a work.

2. Include

- any copyright notice on the original
- appropriate citations and attributions to the source.

3. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

RULES OF THUMB FOR DISPLAYING AND PERFORMING OTHERS' WORKS IN DISTANCE LEARNING

These Rules of Thumb are different from the others. For the most part, Rules of Thumb address making and distributing copies. Distance Learning raises these concerns too, but "public performance" is the focus of these Rules of Thumb. Section 110 of the copyright law authorizes educational performances and displays of entire works (like poems, plays, musical works and movies), but it significantly distinguishes between what can be performed in the classroom and what can be transmitted. This results in a "gap" in legal authority to perform certain works for distance learners. The CONFU Educational Fair Use Guidelines for Distance Learning apply fair use to fill this gap. But the Distance Learning Guidelines only tackle fair use to perform and display others' works in two contexts: live interactive distance learning classes and delayed transmission of faculty instruction.

They do not cover fair use of (performance of) others' works in online course materials. CONFU participants felt that these uses were so new that it was hard to even describe them, let alone describe fair use in this context. Nevertheless, the Guidelines can provide helpful guidance and we recommend that you read them.

Check Sections 110(1) and (2) before proceeding since they authorize considerable performance activity without any need to refer to these Rules of Thumb or the Guidelines. Also check any licenses acquired with materials purchased specifically for distance learning; they should include all the rights you will need to utilize them for that purpose, with no need to refer to these Rules of Thumb or the Guidelines. If they don't, and you need to rely on these Rules of Thumb in any distance learning context, remember: small parts, limited times and limited access are the keys to fair use.

1. Incorporate performances of others' works sparingly and only if a faculty member or the institution possesses a legal copy of the work.

2. Include

- any copyright notice on the original
- appropriate citations and attributions to the source
- a Section 108(f)(1) notice.

3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

RULES OF THUMB FOR DIGITIZING AND USING IMAGES FOR EDUCATIONAL PURPOSES

The CONFU Educational Fair Use Guidelines for Digital Images suggest that fair use requires our libraries to request permission to use images at the same time they are digitized. Our Rules of Thumb take a different approach, but in other respects, the Guidelines can provide helpful guidance and we recommend that you read them.

1. Is the image you wish to digitize readily available online or for sale or license at a fair price?

If YES: Point to, purchase or license the image. Do not digitize it unless you are in the process of negotiating a license. If you have a "contract pending," digitize and use the image in accordance with these Rules of Thumb until the license is finalized and you have received the licensed digital image.

If NO: Digitize and use the image in accordance with the following limitations:

Limit access to all images except "thumbnails" to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

Faculty members also may use images at peer conferences.

Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments etc., and may keep works containing images in their portfolios.

2. Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.

RULES OF THUMB FOR DIGITIZING AND USING OTHERS' WORKS IN MULTIMEDIA MATERIALS FOR EDUCATIONAL PURPOSES

The CONFU Fair Use Guidelines for Educational Multimedia suggest that fair use requires adherence to specific numerical portion limits, that copies of the multimedia work that includes the works of others should be strictly controlled, and that fair use "expires" after 2 years. Our Rules of Thumb acknowledge that these are important considerations, but the Guidelines numbers do not describe the outer limits of fair use. Despite their tightly controlled approach, the Guidelines can provide helpful guidance and we recommend that you read them.

Please keep in mind that the rights described here are rights to create unique works, but not to make multiple copies and give them out (distribute them).

1. Students, faculty and staff may incorporate others' works into a multimedia work display and perform a multimedia work in connection with or creation of

- class assignments
- curriculum materials
- remote instruction
- examinations
- student portfolios
- professional symposia.

2. Be conservative. Use only small amounts of other's works.

3. Don't make any unnecessary copies of the multimedia work.

RULES OF THUMB FOR MUSIC

The Guidelines for Educational Uses of Music negotiated in 1976 can provide helpful guidance and we recommend that you read them.

1. Limit copying as follows:

- sheet music, entire works: only for performances and only in emergencies
- sheet music, performable units (movements, sections, arias, etc.): only if out of print

- student performances: record only for teacher or institutional evaluation or student's portfolio
 - sound recordings: one copy for classroom or reserve room use
2. Include
- any copyright notice on the original
 - appropriate citations and attributions to the source.
3. Replace emergency copies with purchased originals if available.

RULES OF THUMB FOR RESEARCH COPIES

Limit research copies to

- single chapters
- single articles from a journal issue
- several charts, graphs, illustrations
- other similarly small parts of a work.

RULES OF THUMB FOR DIGITIZING AND USING OTHERS' WORKS IN ELECTRONIC RESERVES

The Fair Use Guidelines for Electronic Reserve Systems describe general limitations on the scope of materials that should be included, citation and notice requirements and access, use, storage and reuse of reserve materials. These Rules of Thumb are an abbreviated summary of the Guidelines terms which provide helpful guidance that we recommend you review.

1. Limit reserve materials to

- single articles or chapters; several charts, graphs or illustrations; or other small parts of a work
- a small part of the materials required for the course
- copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).

2. Include

- any copyright notice on the original
- appropriate citations and attributions to the source
- a Section 108(f)(1) notice.

3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.