When to Copy and Not to Copy

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In many instances what teachers want to do with copyrighted materials and what authors and publishers can, in good conscience, approve of are not too far apart. Perhaps what is needed is more dialogue between the parties involved, more clearcut procedures, and more goodwill and commonsense.

Copyright policy in the U.S. today is based upon a combination of a law enacted in 1909 and a series of subsequent judicial decisions which have attempted to balance the equities of the law with the demands of new technologies. In the latest judicial attempt to clarify the library photocopying issue (Williams & Wilkins vs. the National Institutes of Health and the National Library of Medicine), the Supreme Court deadlocked four-to-four, thus sustaining a 5-4 lower court decision which found for NIH and NLM, but on grounds too narrow to provide much help in setting judicial precedent.

In the proposed copyright revision legislation currently before Congress, an attempt is made at setting out these judicial modifications under the title of "fair use." Fair use means the extent to which a copyrighted work may be copied without the permission of the copyright proprietor. It is simple to say that permission to duplicate is needed for any copying which is done beyond what is judicially and historically considered fair. What is not simple is setting an exact rule which categorically delineates what is or is not permissible. The Congress, after almost two decades of debate, has listed the following criteria for consideration of fair use: (1) the purpose and character of the use, (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.

This fair use doctrine was purposely drawn with a broad brush. To be more explicit would be to limit its effectiveness when as-yet-unconceived technologies present new possibilities for uses of copyrighted works. The drawback to this general approach is that it makes it impossible to list dos and don'ts for teachers, librarians, and others who want to know what is and is not a legal use of copyrighted work. But, rough guidelines are possible:

For educational use, much broader leeway would be given to copying items of general interest, such as a news story or a recipe (all other factors being equal), than copying materials specifically designed for classroom use.

Consumable materials, such as tests, answer sheets, workbooks, etc., would not fall within the bounds of fair use if duplicated for classroom use.

Making copies of films or audio cassettes without permission is almost always a violation of copyright.

Making a single copy of an article for personal use is generally considered within the bounds of fair use. The problem arises when the article is duplicated many times either in a single mass duplication or on a one-by-one basis which, in the aggregate, amounts to multiple or "systematic" duplication.

A creative teacher develops a "textbook" using a magazine article, a chapter from a textbook, a portion of an encyclopedia item, and some lengthy excerpts from a scholarly journal. This collection is duplicated and distributed to the class. This is clearly beyond the bounds of fair use.
The question then arises of how to take advantage of modern technology without violating copyright. The answer is licensing or, in a simpler form, permission.

Keep in mind that most publishers are not against copying per se. They realize that teachers want to use materials in the most effective and efficient manner and that duplication often falls into this category. What they are protesting is unauthorized and uncompensated duplication, which may mean lost sales and thus less financial potential for developing new products.

Authorization can be as simple as "granted" stamped upon a letter asking for permission or as complicated as a formal licensing agreement signed between a school district and a producer of AV materials. What is important is that, in such a transaction, users' needs are met without violating the rights of those who create and disseminate the materials in question.

Two groups representing proprietary interests, the Association of American Publishers (AAP) and the Educational Media Producers Council (EMPC), want to exchange opinions and problems with the users they seek to serve. Each organization has developed materials to shed more light on this complex subject and to make it easier to duplicate materials in a legal manner. For a pamphlet on how to ask a publisher for permission to photocopy copyrighted materials, write to AAP, Suite 750, 1920 L St., N.W., Washington, DC 20036. For information on licensing contracts write: Educational Media Producers Council, 3150 Spring St., Fairfax, VA 22030. A synopsis of the proposed copyright revision legislation currently before Congress is available from either AAP or EMPC.

COMMUNICATIONS

UNDERGRADUATE RESEARCH POSITIONS

MIDWEST BIOSCENE has received the following communication requesting information from members. If your institution has such a program please communicate directly with Merrimack College.

I am compiling a listing of undergraduate biological research positions for the summer of 1976, to be published in November or December of 1975. I am looking for positions in the areas of government, museums, field stations and private industry. If you would like your institution on such a listing or if you have any information on research positions, please send me the following information:

1. Is your summer undergraduate biological research position paid or volunteer and can the student receive academic credit?
2. How long has your undergraduate research program been in existence?
3. How many undergraduates are employed and what are the qualifications for employment?
4. If available, please send circulars describing your program.

Thank you.

Sincerely,

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