

# Copyright

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Copyright is a legal protection for creative works allotting a specific period of time, which varies based on the country and type of work produced, in which only the creator can profit from the use, sale, or distribution of a creative work. During this protected period, the creator of a work can license their work to others, either for a fee or for free, but they continue to control primary distribution rights to their work.

By examining the history of copyright, and various legal cases where copyright has influenced the field of education, this chapter provides a background context for understanding the basis of copyright and potentially how to avoid copyright violations. In addition, the principle of fair use, which is commonly used and relied upon in education, is briefly examined.

## History

The US copyright law is included in the Constitution and was originally intended to promote new scientific inventions. Copyright claims were handled at a local level until 1870 when the US copyright office was centralized under the Library of Congress. This centralization process required submission of two copies of each book, pamphlet, map, print, and piece of music registered.

The terms of copyright were originally set in 1790 as 14 years, with an option to submit an application for a renewal that would cover a second 14 years. The length of time copyright was in effect was first changed in 1831 to last for 28 years with an option of a 14 year renewal, and then again in 1909 to change the renewal period to a second 28 years. In 1978, the length of protection was changed to protect works for the life of the author and fifty years after death.

1980 was the first time that computer programs were eligible for copyright protections, and their inclusion was updated in 1990 with provisions allowing for renting and lending of programs. 1992 saw the passage of the Digital Audio Home Recording Act which created rules for distribution of audio recordings and set standards for royalty payments. This was followed in 1997 by the No Electronic Theft Act which set penalties for illegally distributing recordings by electronic means.

In 1998 the Sonny Bono Copyright Term Extension Act set the length of copyright to be the life of the author plus 70 years after death; and that same year also saw the passage of the

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Digital Millennium Copyright Act which gives internet service providers limited immunity for being prosecuted for copyright infringement.

2002 also saw a major update to the law with the Technology, Education, and Copyright Harmonization (TEACH) Act which allowed for certain accredited nonprofit groups to distribute copyrighted materials for digital education purposes.

### **Important Legal Cases**

While there are a large number of legal cases regarding copyright law, presented are five cases that might be of interest to any student of education and technology. This list is by no means comprehensive but instead attempts to highlight specific cases which may be relevant in an educational context.

#### **Williams and Wilkins Co. vs. The United States**

In this case, publishers of specialized medical journals sued the National Institute of Health for distributing photocopies of their published articles to medical researchers. The U.S. Court of Claims ruled in favor of the NIH saying that the benefit to medical science, and injury to the field if photocopying was illegal, outweighed the counter claim by the publishers.

This case was taken into consideration of the 1976 changes to US copyright law which set policies about making and distributing copies of a copyrighted work. Distribution of copies, both physical and digital, has remained a contentious issue since this ruling despite multiple changes to copyright law attempting to keep up with new distribution methods. The core of the ruling, that distributing copies of information contained in scholarly journals is fair use, was affirmed in the more current 2002 TEACH act.

#### **Campbell vs. Acuff-Rose Music Inc.**

This case is often referred to as the “the parody case,” because the major ruling in this case is that parody is considered to be transformative and therefore not an infringement of copyright. The group 2 Live Crew created an alternate version to the Roy Orbison song “Pretty Woman,” and the Orbison estate sued on the grounds that they still held the copyright.

This case was ruled on in 1994, largely before the rise of digital music distribution, and is foundational for a whole sub-genre of music by the likes of Weird Al . In addition, this ruling protects parody in educational settings. An example of protected fair use under this law is when journalists, or news organizations, quote parts of publications in their job duties even though they may not have permission.

## **Jacobson vs. Katzer**

This case is one that affirmed that individuals who release their works as open source can set rules for their usage. Jacobson developed an open source program for model trains, which Katzer later used in a product he sold. Jacobson sued saying that his open source project was protected under Artistic License, which the courts agreed.

The larger ramifications for this case are that even when software is released as open source there are still copyright questions to be considered in its usage. It also protects open source work with a monetary value from being copied and distributed by others without proper licenses and usage agreements, which in this case were outlined beforehand.

## **A.V. vs. iParadigms LLC**

This case affirmed that fair use could involve whole works should the usage be considered transformative enough. The defended iParadigms created an anti-cheating software that archived all student works submitted and compared each new submission to its expanded archive. Students sued saying iParadigms's holding of their work was copyright infringement, but the courts ruled that using the works in a completely different context, anti-cheating, was considered transformative.

The larger ramifications for this case are that it expands the principle of transformational use beyond that of parody and opens up multiple avenues of usage for copyrighted material so long as the usage is significantly different than the original intent. In addition, the ruling mentioned that while there were negative effects to the students - in that the aftermarket for their papers was diminished - copyright law was not concerned with protecting copyright holders from this secondary harm.

## **Cambridge University Press et al. vs. Patton et al.**

This case ruled that Georgia State University's usage of excerpts from journals made available to students in a special course reserve without explicit permission from major publishers was considered Fair Use in almost all cases brought by the plaintiffs. What that means is that Fair Use applies to digital distribution of 'large parts' of works in an education context.

The larger impact of this case is to follow the prevailing wisdom about "printed course packs" where an outside source would print the files that the university legally had permission to use and sell them to students at a mark-up. The appeals process of this particular case may cause the Supreme Court to address this issue again.

## **Avoiding Copyright Infringement**

Under the terms of the Sonny Bono Copyright Extension Act, all material is copyrighted

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until 80 years after the author's death. A guideline under this rule may be to make the blanket assumption that anything produced in the last 100 years is still going to be under copyright and to inquire further before using.

Some authors choose to release the copyright on their works before the allotted time expires, and still others choose to publish their work while waiving copyright entirely. When either of these scenarios occurs - or the copyright expires naturally - the work enters into what is called the "Public Domain" where the work is then free for use and distribution in perpetuity. There are several search engine filters that will display only results that fall under this category. However, these may not be completely accurate, and it is recommended to double check before publication when using these filters.

The US office of copyright also has a semi-searchable database of registered works (indexing of files is still in progress) that can be used as a guideline for what is still under terms of copyright and what is in the public domain. This database can be found at: [www.copyright.gov/records/](http://www.copyright.gov/records/)

The public domain database, Wikimedia Commons , is also a source for media that is in the public domain. This site features both photos, video, and audio files from a variety of sources. However, some content found on this site is not available for use in publication or other activities where the user stands to profit from its usage .

An often forgotten way to ensure compliance with copyright law is simply to ask permission from the original copyright owner. Finding this original owner may pose a challenge, although using the US office of copyright reference database may provide information. Consult a legal professional as needed before publication.

## **Fair Use**

Fair use is the legal term for when using copyrighted material may be acceptable despite its current status. There are no absolute rules that officially determine what qualifies as fair use, however, over the years the court system has applied four legal guiding principles for looking at what may qualify. The prevailing wisdom is that if three or more are met then the qualifications for fair use have been met, although this is no legal guarantee against potentially being sued. The four major standards are: purpose of use, nature of the copyrighted work, relative amount of the work used, and the effect on the market value of the work.

### **Purpose of Use**

Purpose of use is met if the work is transformed in a meaningful way, such as in parody, or if meaningful amounts of content are added. The transformation does not have to be total, but the final result must be noticeably different than the initial copyrighted material.

An example of this is the case of A.V. vs. iParadigms LLC listed above. The key finding in

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this case was that iParadigms was using copyrighted materials for a wholly different purpose than the original author's intended usage.

### **Nature of Copyrighted Work**

Nature of copyrighted work is focused on the knowledge value of the source in question. There is more leeway to use factual information that is under copyright for the advancement of educational purposes than there is to use whole sections of non-fiction works.

An example of this is the case of Williams and Wilkins Co. vs. The United States mentioned above. The key factor in the opinion on this case was the value of the copyrighted materials to further knowledge in the field of medicine.

### **Relative Amount**

Relative amount is often mistakenly assumed to have a fixed number attached to it, but there is no official standard set for how much of a work may be reproduced and still be fair use. A common standard is "ten percent," but this rule is still largely up for individual interpretation.

An example of this is the case Cambridge University Press et al. vs. Patton et al. mentioned above. The key finding in this case relied on how much of each copyrighted work was being used without permission, and while the court did not set a numerical or percentage amount, it did rule that how much of the content was used was a key factor in each individual ruling.

However, relative amount may not apply when the section of the work taken is considered to be "the heart of the work" or the most important, or memorable, piece from the whole. An example of this is the court case where the song "Ice Ice Baby" was found to have taken the base rhythm line from the Queen song, "Under Pressure." Although the amount of music copied was less than ten percent, because the baseline is what made the song so catchy and recognizable, the courts found case for copyright infringement.

### **Market Effect**

Market effect focuses on whether the usage of the material financially harms the original copyright holder. Even if the market for the new usage of the material is different than the original, if there is a case that the original copyright holder may have exploited that market, then fair use may not apply.

An example of this is the case of Jacobson vs. Katzer mentioned above. The key finding in this case was that Katzer had caused monetary harm by creating a competing software using the open source code.

A more detailed explanation of what constitutes each standard can be found in the chapter focusing on fair use.

## Conclusion

Copyright law is deeply embedded in the field of education. As such, education is often impacted by the legal changes in copyright law. With the creation of online resources, there are many more points of access for obtaining research materials and media for use in publication; however, there are still copyright protections which need to be checked and examined even with these new means of finding material in the public domain. In addition, academic fair use is a legal issue that is continually evolving, and students should proceed with care when applying the principle of fair use as justification for use of copyrighted material.

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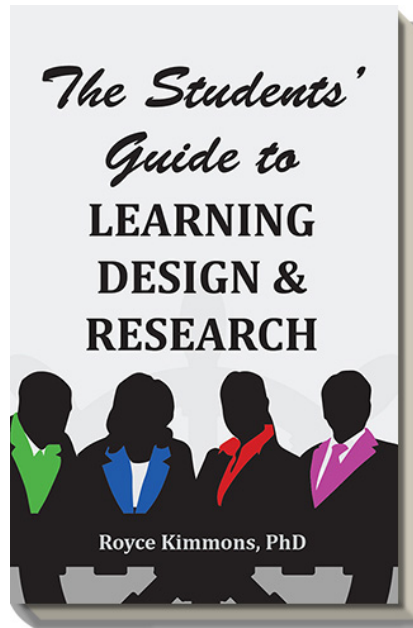
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