

Copyright and Fair Use



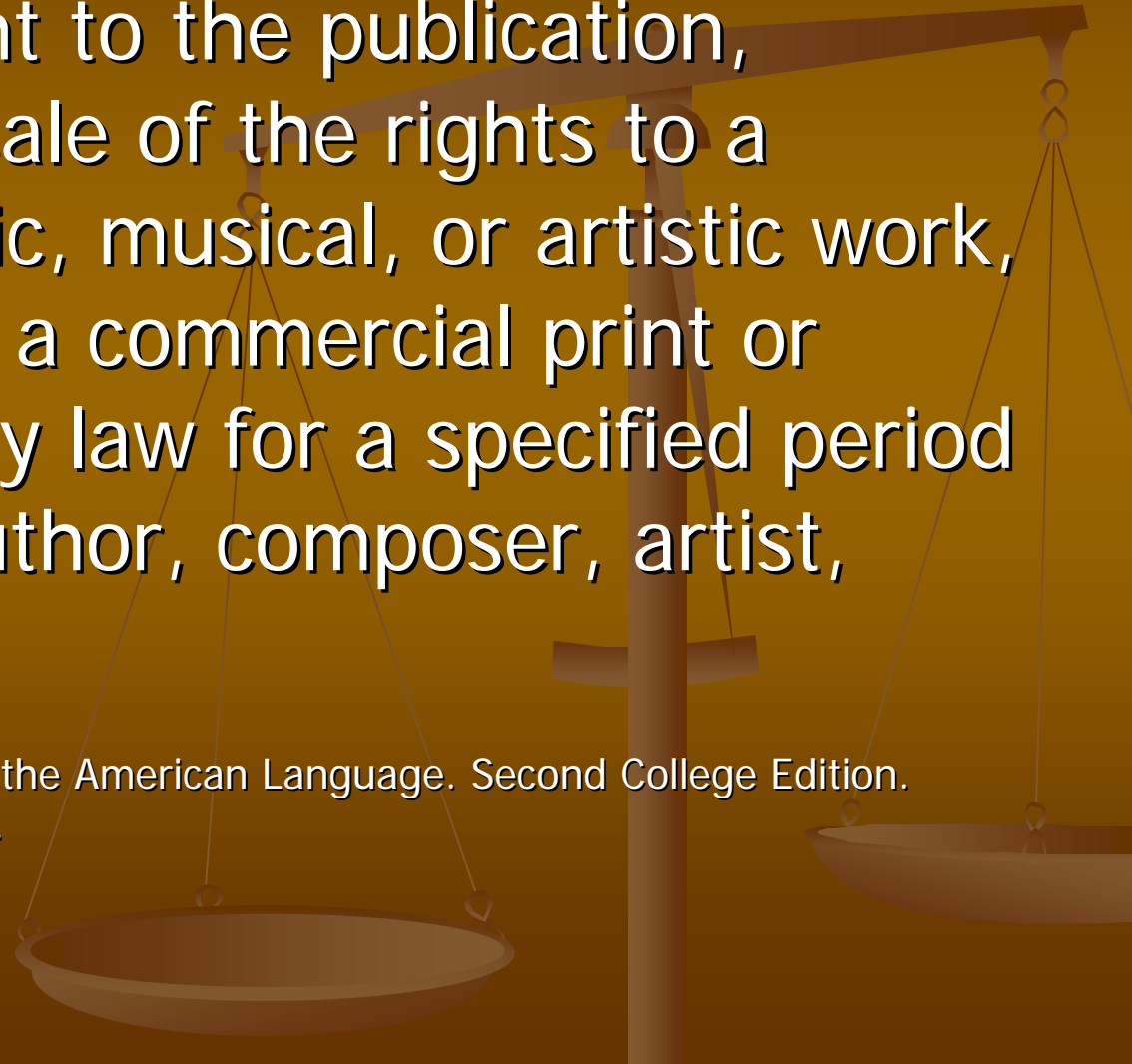
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February 1, 2008

What is copyright?

The exclusive right to the publication, production, or sale of the rights to a literary, dramatic, musical, or artistic work, or to the use of a commercial print or label, granted by law for a specified period of time to an author, composer, artist, distributor, etc.

Webster's New World Dictionary of the American Language. Second College Edition. 1986. N.Y.: Prentice Hall Press.



What is copyright?

In the United States, copyright law protects the authors of “original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works.” This protection covers both published and unpublished works, regardless of the nationality or domicile of the author. It is unlawful for anyone to violate any of the rights provided by copyright law to the owner of a copyright.

Copyright Basics: Introduction. Copyright Clearance Center. <http://www.copyrightoncampus/basics/index.asp>. Accessed August 7, 2005.

How Is Copyright Obtained?

- Automatic copyright

- Registration

U.S. Copyright Office

<http://www.copyright.gov>



Copyright Compliance



There are four ways to comply with the law:

1. Determine that the work is not protected.
2. Qualify under the TEACH Act.
3. Qualify for "fair use" of the work.
4. Get permission from the copyright holder.

Works Not Protected



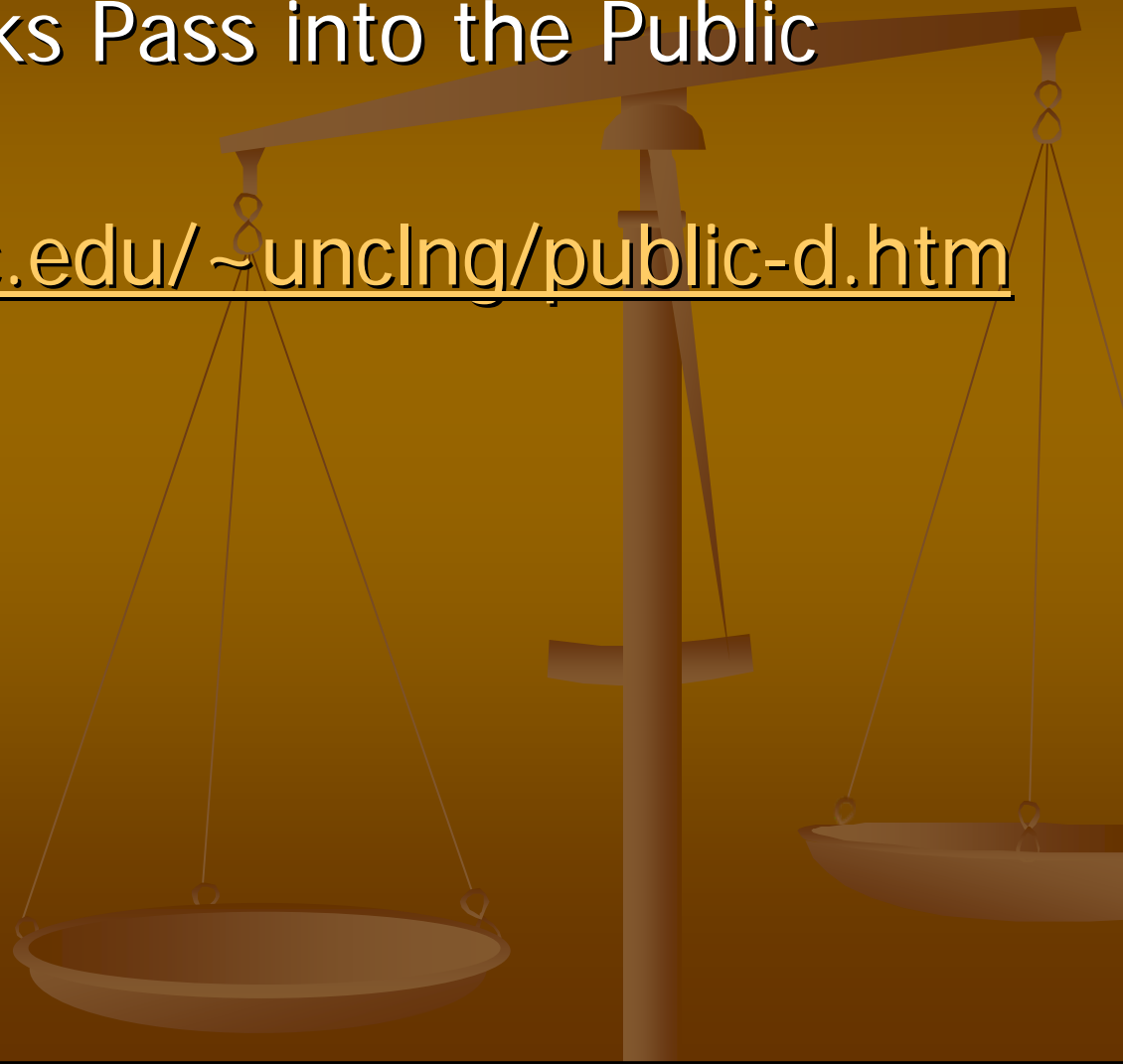
- Works published before 1923
- Works published by US government
- Works where the copyright has been waived by the creator
- Works for which the creator allows use and dissemination of a work in certain cases (e.g., non-commercial purposes)

<http://www.lib.ncsu.edu/scc/legislative/teachkit/copyright.html>

Resources

- When U.S. Works Pass into the Public Domain

<http://www.unc.edu/~uncclng/public-d.htm>



TEACH Act



- Technology, Education, and Copyright Harmonization (TEACH) Act, 2002
 - Expands categories of works that can be performed in distance education
 - Removes concept of a physical classroom
 - Accredited, nonprofit educational institution
 - Institution must meet stringent requirements

Fair Use



Fair use is a concept unique to U.S. law that provides a defense to copyright infringement in certain special situations.

If a use is a fair use, then one may copy an otherwise protected work without permission from the copyright owner and without the use being deemed an infringement.

Handbook for Digital Projects: A Management Tool for Preservation and Access. 2000. Andover MA: Northeast Document Conservation Center.

Fair Use

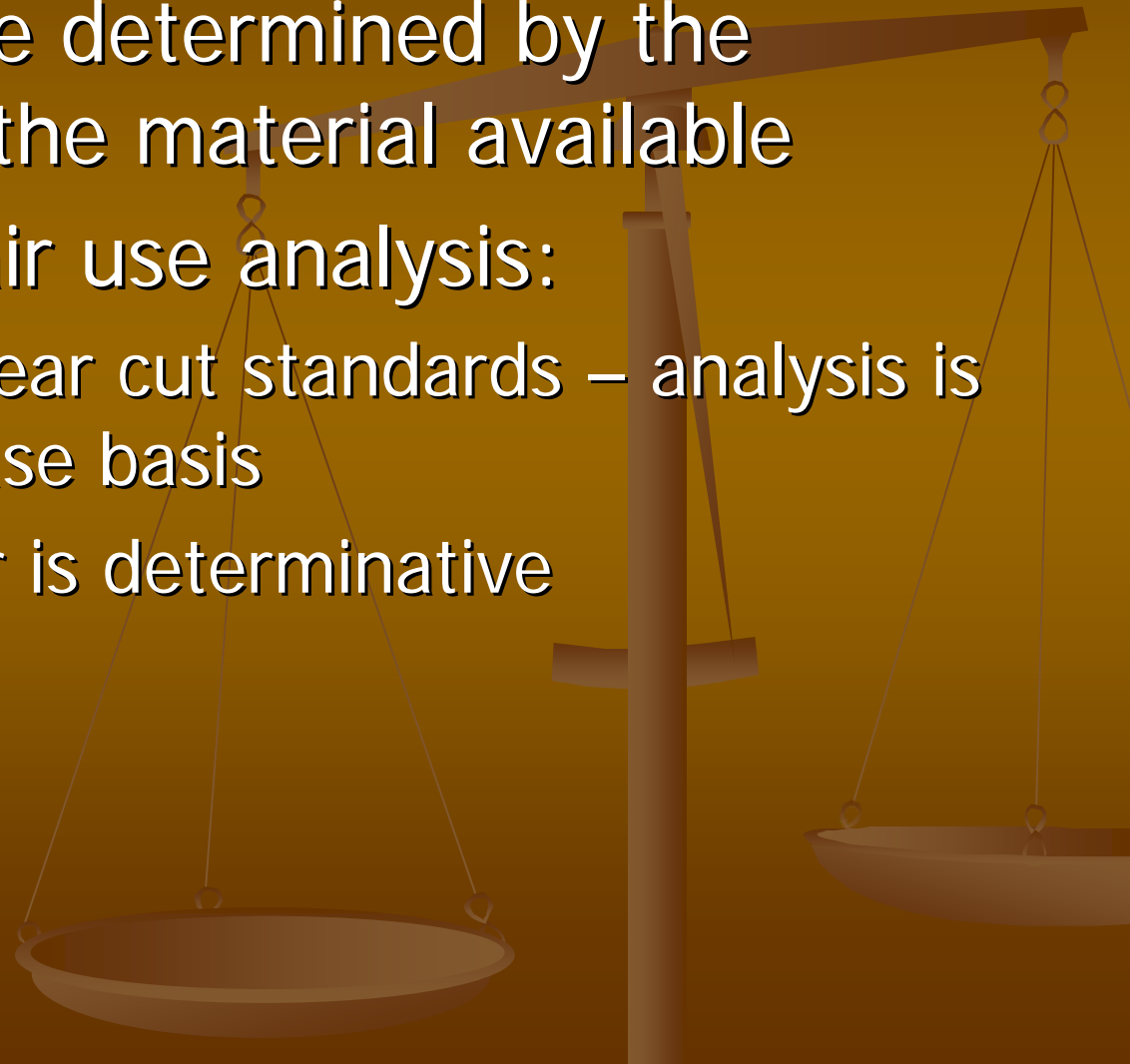


Fair use is an exception to exclusive rights of copyright owners, and it is only available for limited uses for such purposes as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.

Depending upon the balance of the “four factors,” copying is not an infringement under U.S. law.

Fair Use

- Fair use must be determined by the person making the material available
- Basic rules of fair use analysis:
 - There are no clear cut standards – analysis is on a case by case basis
 - No single factor is determinative



Fair Use

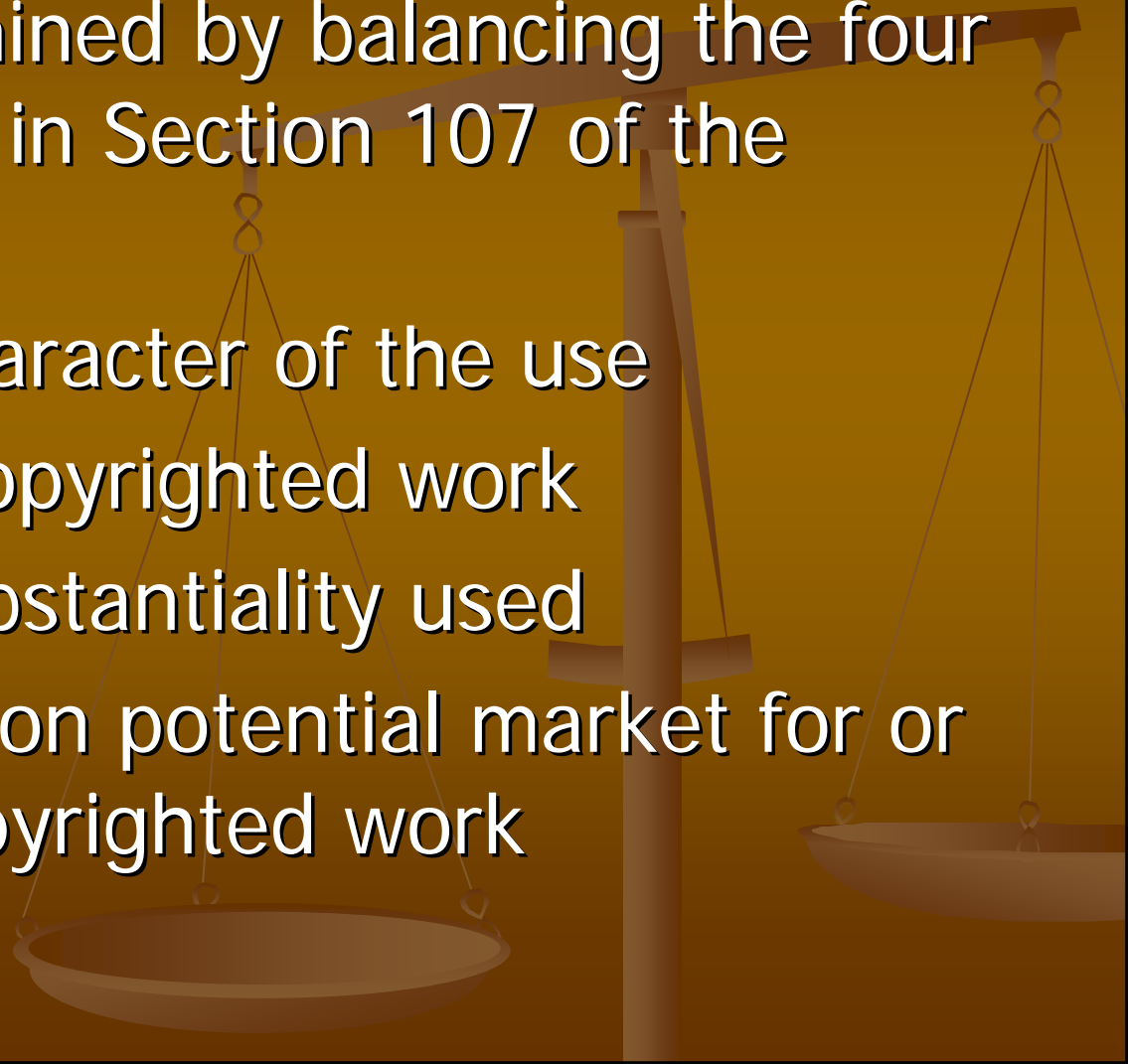


We would all appreciate a clear crisp answer...but far from clear and crisp, fair use is better described as a shadowy territory whose boundaries are disputed, more so now that it includes cyberspace than ever before. In a way, it's like a no-man's land. Enter at your own risk.

Fair Use – Four Factors

Fair use is determined by balancing the four factors detailed in Section 107 of the Copyright Act.

- Purpose and character of the use
- Nature of the copyrighted work
- Amount and substantiality used
- Effect of use upon potential market for or value of the copyrighted work

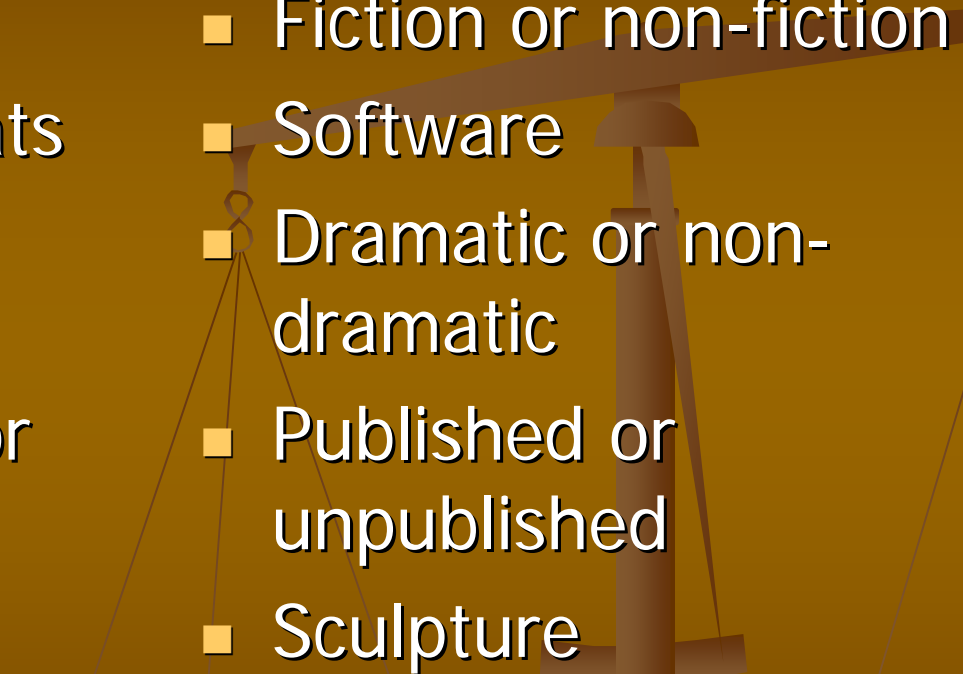


Four Factors – Purpose

- Nonprofit educational use
- Criticism and comment
- News reporting
- Face to face teaching
- Scholarship and research

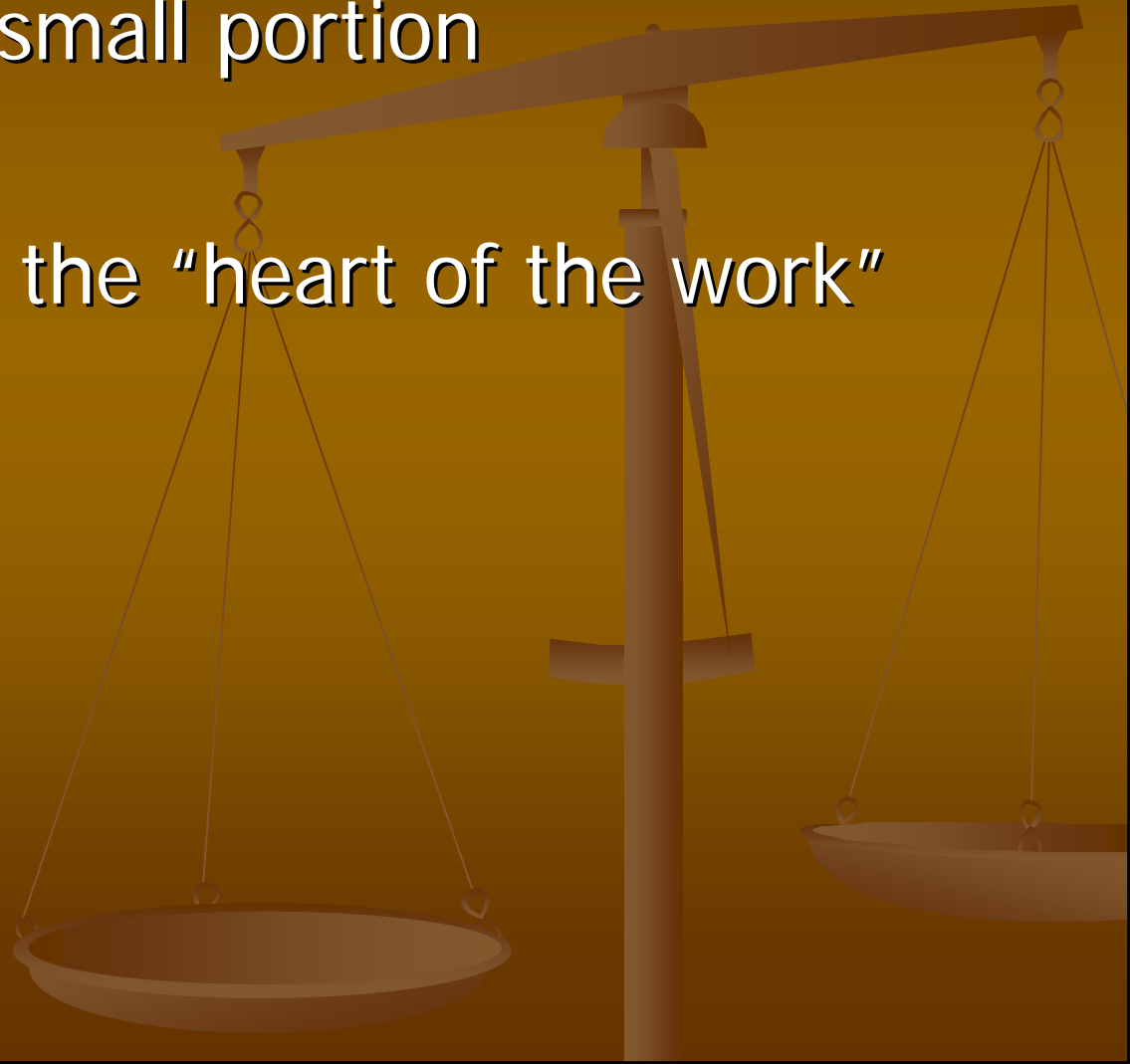


Four Factors – Nature

- Digital or analog
 - Audio-visual formats
 - Performance or display
 - Published before or after 1976
 - Picture
 - Fiction or non-fiction
 - Software
 - Dramatic or non-dramatic
 - Published or unpublished
 - Sculpture
- 

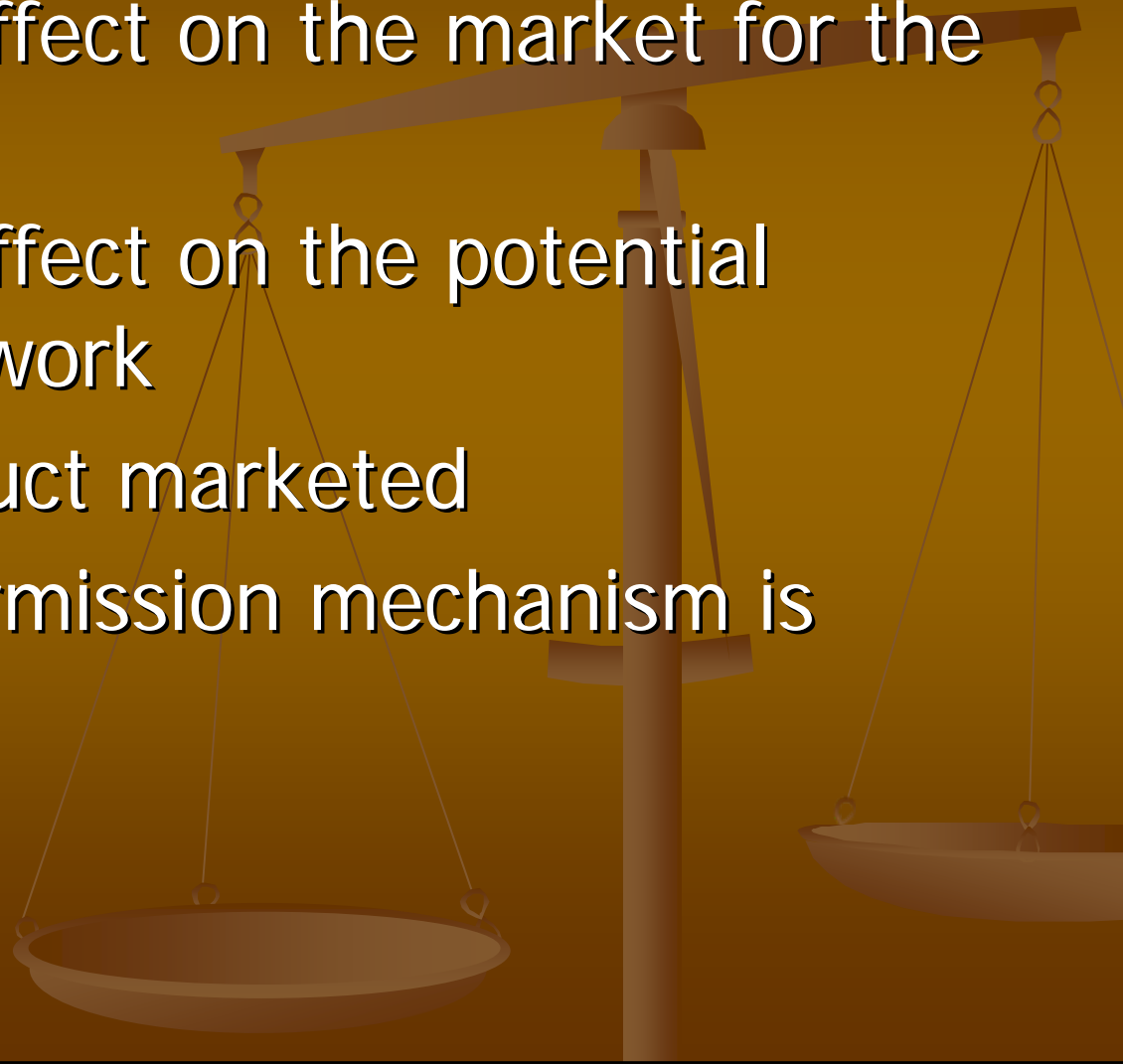
Four Factors – Amount

- Quantitative: A small portion
- Qualitative: Not the “heart of the work”



Four Factors – Effect

- No significant effect on the market for the work
- No significant effect on the potential market for the work
- No similar product marketed
- Licensing or permission mechanism is absent



Fair Use Checklist

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

PURPOSE

Favoring Fair Use

Opposing Fair Use

- | | |
|--|--|
| <input type="checkbox"/> Teaching (including multiple copies for classroom use) | <input type="checkbox"/> Commercial activity |
| <input type="checkbox"/> Research | <input type="checkbox"/> Profiting from the use |
| <input type="checkbox"/> Scholarship | <input type="checkbox"/> Entertainment |
| <input type="checkbox"/> Nonprofit Educational Institution | <input type="checkbox"/> Bad-faith behavior |
| <input type="checkbox"/> Criticism | <input type="checkbox"/> Denying credit to original author |
| <input type="checkbox"/> Comment | |
| <input type="checkbox"/> News reporting | |
| <input type="checkbox"/> Transformative or Productive use (changes the work for new utility) | |
| <input type="checkbox"/> Restricted access (to students or other appropriate group) | |
| <input type="checkbox"/> Parody | |

NATURE

Favoring Fair Use

Opposing Fair Use

- | | |
|--|--|
| <input type="checkbox"/> Published work | <input type="checkbox"/> Unpublished work |
| <input type="checkbox"/> Factual or nonfiction based | <input type="checkbox"/> Highly creative work (art, music, novels, films, plays) |
| <input type="checkbox"/> Important to favored educational objectives | <input type="checkbox"/> Fiction |

AMOUNT

Favoring Fair Use

Opposing Fair Use

- | | |
|--|---|
| <input type="checkbox"/> Small quantity | <input type="checkbox"/> Large portion or whole work used |
| <input type="checkbox"/> Portion used is not central or significant to entire work | <input type="checkbox"/> Portion used is central to work or "heart of the work" |
| <input type="checkbox"/> Amount is appropriate for favored educational purpose | |

EFFECT

Favoring Fair Use

Opposing Fair Use

- | | |
|---|--|
| <input type="checkbox"/> User owns lawfully acquired or purchased copy of original work | <input type="checkbox"/> Could replace sale of copyrighted work |
| <input type="checkbox"/> One or few copies made | <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative |
| <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work | <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work |
| <input type="checkbox"/> No similar product marketed by the copyright holder | <input type="checkbox"/> Affordable permission available for using work |
| <input type="checkbox"/> Lack of licensing mechanism | <input type="checkbox"/> Numerous copies made |
| | <input type="checkbox"/> You made it accessible on Web or in other public forum |
| | <input type="checkbox"/> Repeated or long-term use |

Applying Fair Use



Checklist for Fair Use

<http://copyright.iupui.edu/checklist.htm>

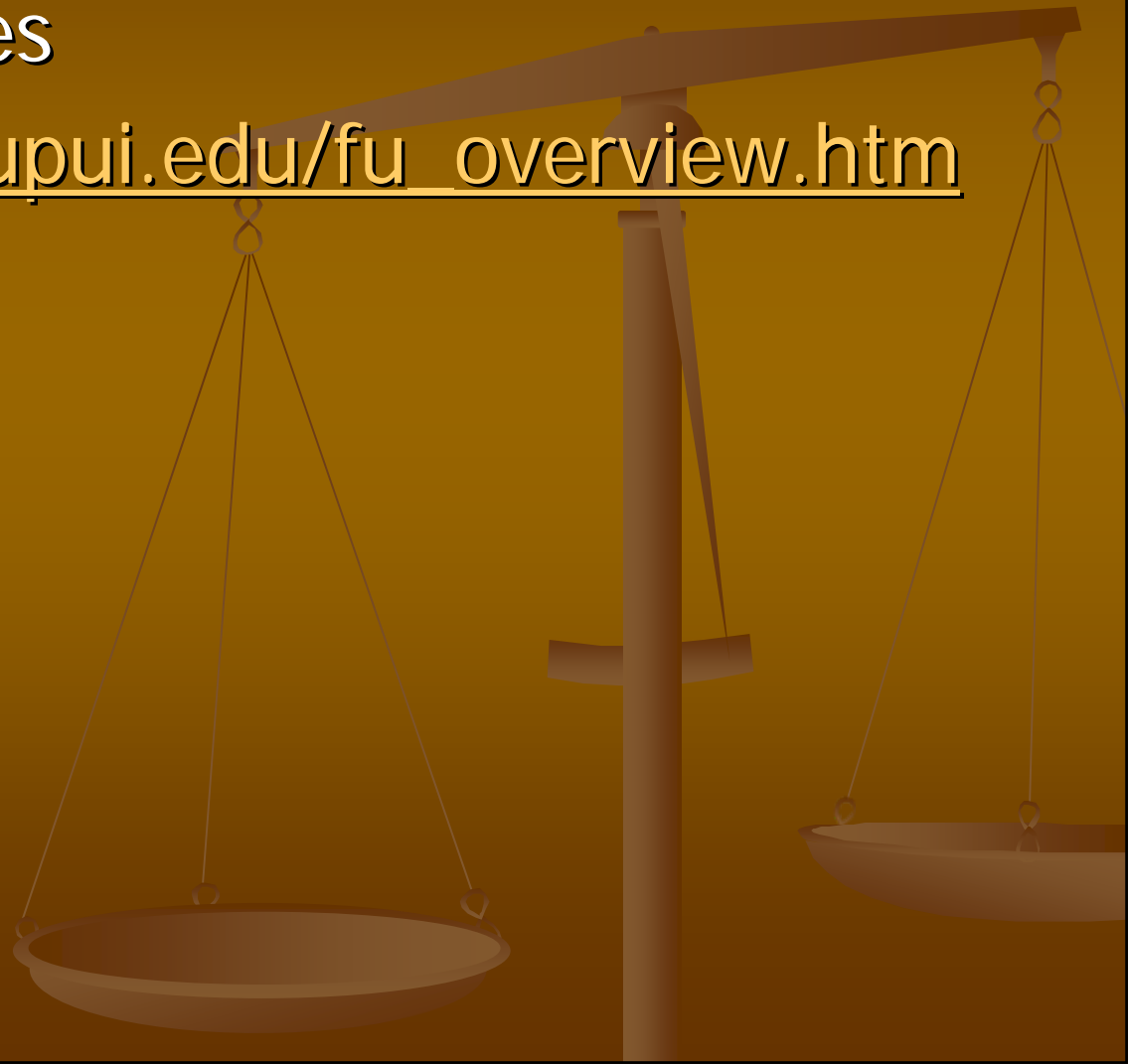
Copyright and Fair Use Guidelines for Teachers

http://i.cmpnet.com/techlearning/pdf/db_area/archives/TL/2002/10/copyright_chart.pdf

Applying Fair Use

Fair-Use Guidelines

http://copyright.iupui.edu/fu_overview.htm



Permissions

Getting Permission

[http://www.utsystem.edu/ogc/
intellectualproperty/permisn.htm](http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm)

Copyright Clearance Center

<http://www.copyright.com>



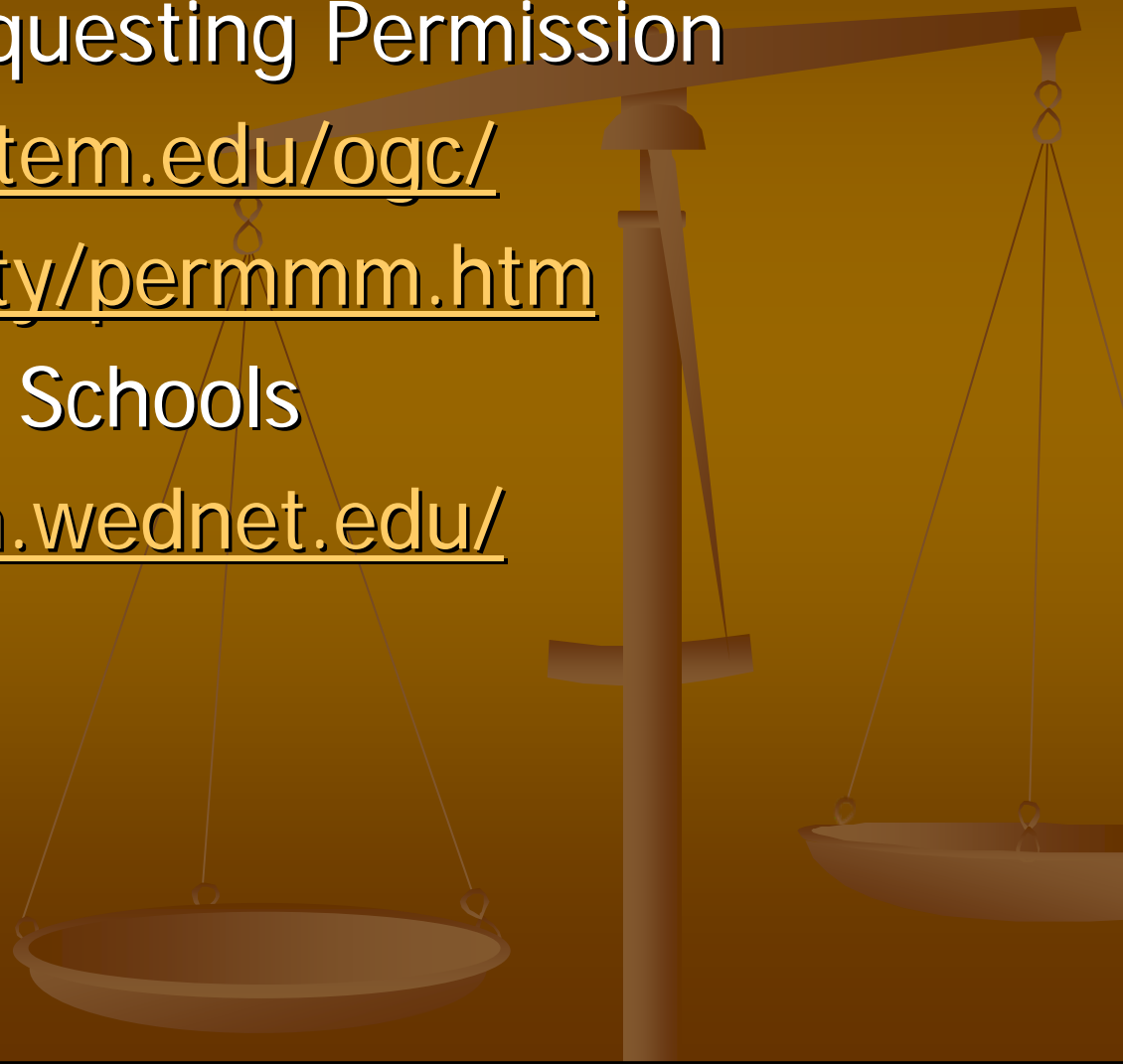
Sample Permission Letters

Sample Letter Requesting Permission

[http://www.utsystem.edu/ogc/
intellectualproperty/permmm.htm](http://www.utsystem.edu/ogc/intellectualproperty/permmm.htm)

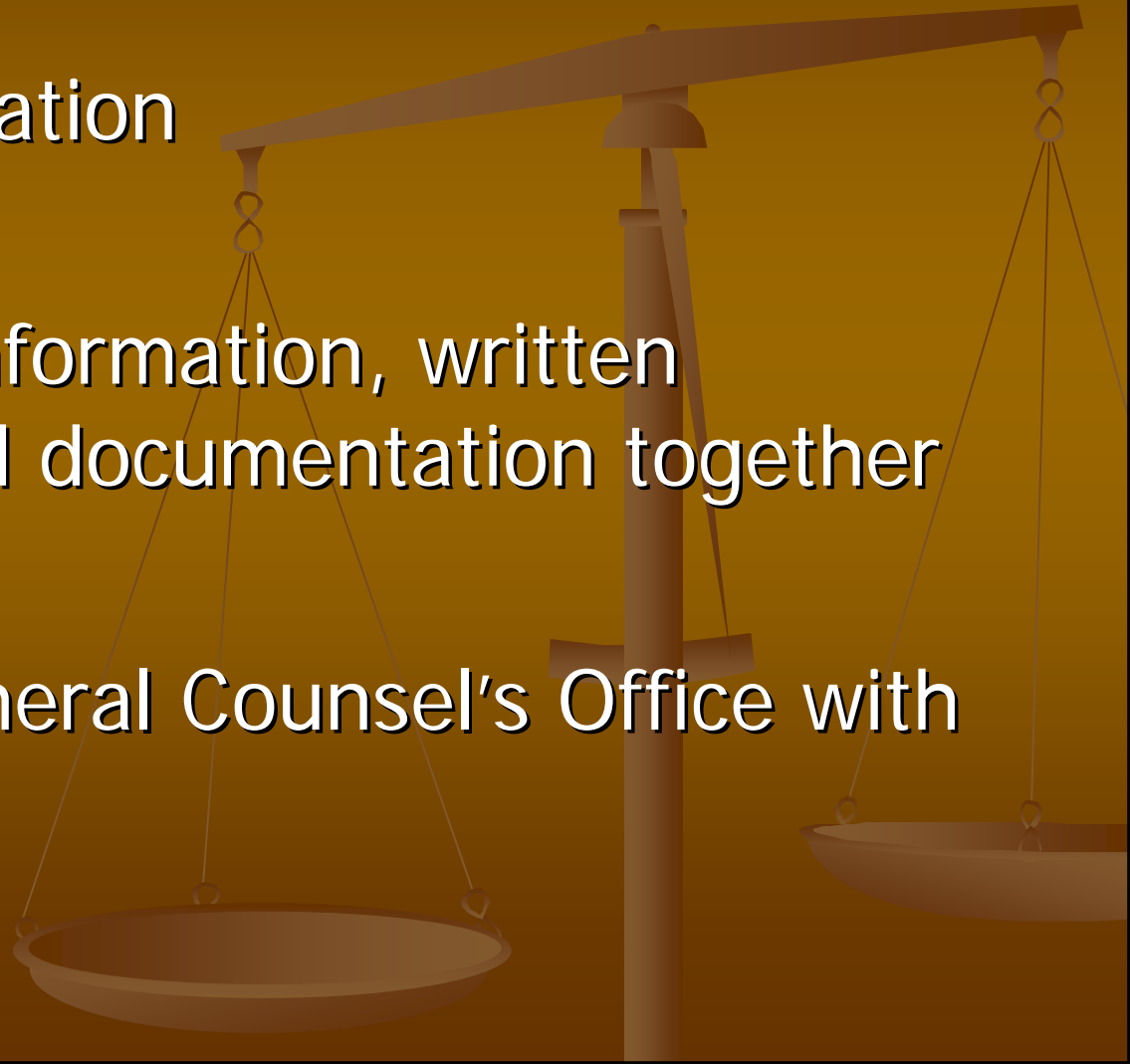
Bellingham Public Schools

[http://www.bham.wednet.edu/
copyperm.htm](http://www.bham.wednet.edu/copyperm.htm)



Protect Yourself

- Keep documentation
- File copyright information, written permissions and documentation together
- Contact the General Counsel's Office with questions



General Resources



Complete Copyright (Companion website to
*Complete Copyright: An Everyday Guide
for Librarians*)

<http://www.ala.org/complecopyright>

Copyright and Multimedia Law for
Webbuilders & Multimedia Authors

[http://bailiwick.lib.uiowa.edu/journalism/
mediaLaw/copyright_main.html](http://bailiwick.lib.uiowa.edu/journalism/mediaLaw/copyright_main.html)

General Resources



Copyright and Digital Resources

<http://www.bsu.edu/library/collections/copyright>

Copyright Crash Course

<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>

Copyright Guidelines for Administrators

<http://www.techlearning.com/copyrightguide/>

General Resources



Copyright Resources on the Internet

<http://www.groton.k12.ct.us/mts/pt2a.htm>

Copyright Website

<http://www.copyrightwebsite.com/>

techLEARNING

<http://www.techlearning.com>

General Resources



Butler, Rebecca P. *Copyright for teachers and librarians*. 2004. Neal-Schuman, NY.

KF2995 B88 2004

Crews, Kenneth D. *Copyright law for librarians and educators*. 2d ed. 2006. ALA, Chicago.

KF2995 C74 2006

Russell, Carrie. *Complete copyright: An everyday guide for librarians*. 2004. ALA, Chicago.

KF2995 C57 2004

General Resources

Russell, Carrie. *Understanding and protecting fair use*. Public Libraries 42.5 Sept/Oct 2003. 288-9
(available from Nebr. Library Commission)

Simpson, Carol. *Copyright for Schools: A Practical Guide*. 4th ed. 2005. Worthington OH: Linworth.
KF3020.Z9 S57 2005

Walters, Donna. *Copyright – What's right and what's not*. The Book Report 19.2 Sept/Oct
2000. 53, 55.
Z675.S3 B65