

COLLEGE GUIDELINES FOR COMPLYING WITH COPYRIGHT LAW

For “Guidelines for Specific Materials” see MCCS Policies tab in MyMCCS portal

Excerpted from...

207.1 MAINE COMMUNITY COLLEGE SYSTEM : GENERAL ADMINISTRATION

It is the policy of the System that faculty, staff and students exercise sound judgment in determining what constitutes permissible copying under the law; secure applicable permission whenever it is legally necessary; and that each person be individually responsible for these determinations. (207.1 A, p.1)

...

The Copyright Act, however, specifically exempts from damages employees of non-profit educational institutions or libraries who believed or had reasonable grounds to believe that his/her use of the copyrighted work was “fair use.” While this “fair use” provision (see F, infra) is often ambiguous, persons who attempt to stay within its parameters should have an adequate good faith defense in the case of an innocently committed infringement. (207.1 D, p.2)

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207.1 F. GENERAL RULE THAT FAIR USE IS PERMITTED

The Copyright Act limits the rights of a copyright holder by allowing students, researchers and instructors to use, without express permission, copyrighted materials “fairly.” In determining whether the use made of a work in any particular case is a “fair use,” you must consider the purpose and character of the use; the nature of the copyrighted work; the amount of the copyrighted work used; and the effect of the use upon the potential market for or value of the copyrighted work. The following examples detail the application of these factors:

1. What is the purpose and character of the use?

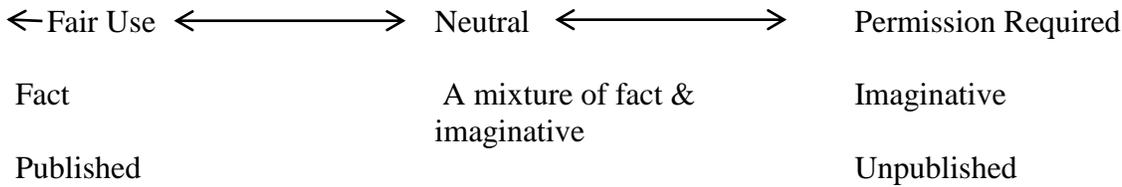
Different uses will have different purposes and/or characters, and the following scale gives examples of those differences:



Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner -- in favor of seeking permission. The uses in the middle, if they apply, add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

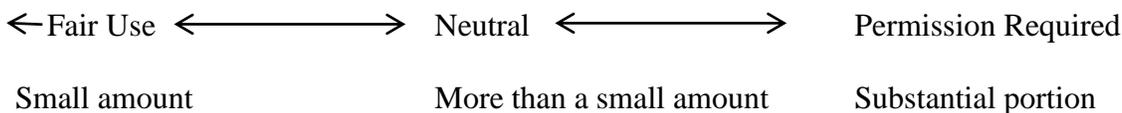
2. What is the nature of the work to be used?

The work to be copied can have different natures, and the following scale gives examples of those differences:



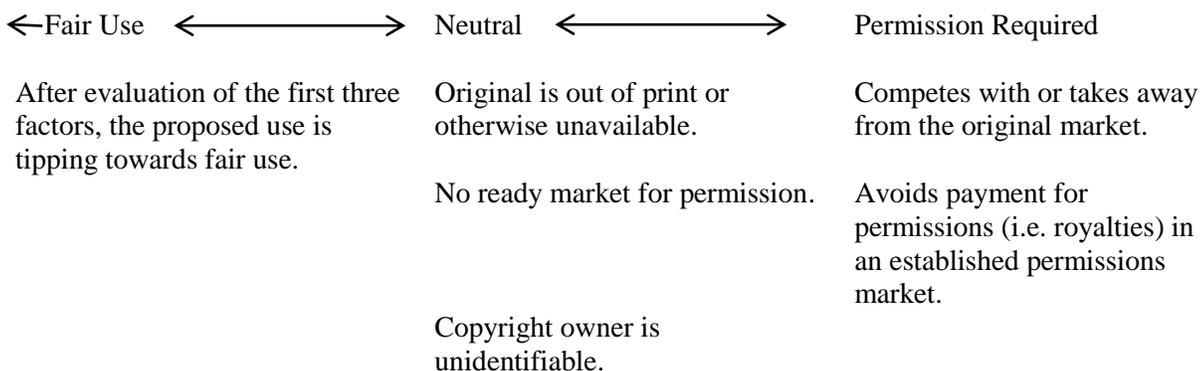
Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance.

3. How much of the work will you use?



Uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of requesting permission. If the first factor weighed in favor of fair use, you can use more of a work than if it weighed in favor of seeking permission. A non-profit use of a whole work will weigh somewhat against fair use. A commercial use of a whole work would weigh significantly against fair use. For example, a non-profit educational institution may copy an entire article from a journal for students in a class as a fair use; but a commercial copyshop would need permission for the same copying. Similarly, commercial publishers have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier portions.

4. If the proposed use were widespread, what effect would it have on the market for the original or for permissions?



This fourth factor asks, “Is the owner losing money because of this use?” This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing; it depends on what happened with the first three factors.