

## **INTRODUCTION: Copyright Law History**

As you prepare for your teaching assignment, you may want to develop handouts, supplemental resources, audio-visual materials, and items to enrich your instruction. We encourage you to do so; however, the copyright law provides limitations that the College community must follow. A wealth of information on copyright law is available in print and on the Web, often in detail, to guide JWCC faculty in complying with the intent of the law.

As a responsible citizen of the JWCC community, each of us has a responsibility to comply with copyright law and its application to our work as educators. Faculty, students, and staff at JWCC are likely to face an event or activity, which demands some knowledge of the copyright law. Copyright law limits what you may copy, under what conditions, and for what purposes. Copyright law attempts to balance the specific rights of authors and producers, and also enable educators and students to access information and reproduce copyrighted materials under clearly defined limitations for educational purposes.

Copyright law stems from the US Constitution, art 1, Section (8) "The Congress shall have the power...to promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries."

Originally, "exclusive rights" applied to the rights of authors and inventors over the reproduction and distribution of their works. The "exclusive rights" created a market place free of competition since the rights holders held sway over the reproduction and distribution of their works. Exclusive rights are outlined in section 106 of the U. S. copyright law. In addition, sections 107 - 121 give the copyright owner exclusive rights to do or authorize the following:

1. to **reproduce** the copyrighted work in copies or **phonorecords**
2. to **prepare derivative works** based upon the copyrighted work
3. to **distribute** copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work **publicly**
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display** the copyrighted work **publicly**
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a **digital audio transmission**

**\*An important concept to remember is that the copyright law seeks to balance and respect equally the rights of the creator and copyright holder as well as the rights of the public**

## **FAIR USE AND THE FOUR FACTORS**

What faculty may or may not copy in an educational setting requires a clear understanding of the concept of **fair use** and is the single most important limiting factor.

- Section 107 of the copyright law states: ....fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by the section (Sec. 106) for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright
- In colleges, universities and other educational organizations, **fair use** is often used as a defense of possible copyright infringement. **Fair use** excuses or "holds blameless" possible copyright infringement when faculty use a limited amount of the work for purposes of criticism, comment, news reporting, teaching, scholarship, or research
- Section 107 of the Copyright Act establishes the **four factors** that each faculty member must consider when using copyrighted material under the **fair use** defense (evaluating the **fair use** of copyrighted materials in an educational settings)
  - The purpose and character: if your use is for teaching at a nonprofit educational institution, this is a factor favoring fair use. The fair use scale tips further in favor of fair use if access is restricted to your students
  - The nature of the copyrighted work: Is the work fact based, published, or out-of-print? these factors weigh in favor of fair use
  - The amount used: using a small portion of a whole work weighs in favor of fair use, but sometimes it may be fair to use an entire work (such as an image) if it is needed for your instructional purpose.
  - Market effect: a use is more likely to be fair if it does not harm the potential market for or value of the copyrighted work. But if it does, this could weigh more heavily against fair use than the other factors.

### **EXAMPLES:**

- Copying reasonable portions of longer works for your class
- Copying a timely article (or one you've recently discovered that is relevant for your class) when its unreasonable to expect a sufficiently rapid reply to a request for permission
- Copying a graphic or an image from a work to display in your lectures

**KEEP IN MIND THAT THERE ARE NO BLACK AND WHITE RULES NOR DOES ONE FACTOR ALONE DETERMINE A PERSON'S RIGHT TO USE ANY COPYRIGHTED WORK WITHOUT PERMISSION.**