

A Framework for Analyzing any U.S. Copyright Problem

One of the most difficult issues for educators, when faced with a copyright problem, is simply knowing where to begin -- which parts of the legal rules and doctrines apply to the specific problem?

To deal with this uncertainty, we suggest working through the following five questions, in the order they are presented. They are simple questions, but they are not easy to answer; by working through them in order, it is possible to identify which of the parts of copyright law apply to the specific problem or fact pattern that you need to address.

The five questions that form this framework for copyright analysis are:

1. Is the work protected by copyright?

- a. Is the work I want to use protected by copyright, or is it in the public domain?
- b. If I wrote it, do I still own copyright, or did I sign over rights for my intended use to the publisher?

2. Is there a specific exemption in copyright law that covers my use?

- a. Is my intended use covered by a specific exemption to the exclusive rights in the copyright law, such as the ones for libraries or for classroom performances and displays?

3. Is there a license that covers my use?

- a. Is there a Creative Commons license attached to the work? If so, can I comply with the terms of the license, or can I find another useful work that is CC-licensed?
- b. If affiliated with an educational institution, is there a license that governs how the copyrighted material I'm accessing through my library can be used? If so, can I comply with the license terms? If you are uncertain, your librarian should be able to help you.

4. Is my use covered by fair use?

- a. Four factors are:
 - i. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - ii. the nature of the copyrighted work;
 - iii. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - iv. the effect of the use upon the potential market for or value of the copyrighted work.
- b. Questions for transformative fair use under factor one are:
 - i. Does the copyrighted material help me make my new point?
 - ii. Will it help my readers or viewers get my point?
 - iii. Have I used no more than is needed to make my point? (Is it "just right"?)

5. Do I need permission from the copyright owner for my use?

- a. If so, first locate the copyright owner and fully explain your intended use in your permission request.
- b. If no response or answer is no, reconsider your use of this work to see if you can make a fair use, or consider using another work.



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