Common Fair Use Misconceptions

Fair use provides us with the ability to use portions of copyright works for the purpose of teaching, research, news reporting, criticism, and commentary. There is often a lot of confusion regarding fair use; this document will help dispel many of the most common misconceptions.

Here is the fair use statute (17 U.S.C. § 107):
In determining whether the use made of a work in a particular case is a fair use the factor to be considered shall include—
1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relations to the copyright work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work

**Common Misconceptions**

**Using more than 10% of a work is infringing.**
As you can see in the statute above, the law places no word limits or percentages on the amount of a work you can use. When making a fair use decision carefully consider how much of the work you need to use to teach the material, the significance of that portion in relation to the rest of the work, and if it’s enough of the work that the student should be purchasing a copy for themselves. The fair use tools can help you decide if the amount you wish to use will be infringing.

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<tr>
<th>Fair Use Tool</th>
<th>Website</th>
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<td>ALA Fair Use Evaluatoor</td>
<td><a href="http://librarycopyright.net/fairuse/">http://librarycopyright.net/fairuse/</a></td>
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<tr>
<td>Thinking Through Fair Use</td>
<td><a href="http://www.lib.umn.edu/copyright/fairthoughts">http://www.lib.umn.edu/copyright/fairthoughts</a></td>
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**If you want to use a work in subsequent semesters you must seek permission from the rightsholder.**
There is nothing written in the law about seeking permission from the rightsholder for subsequent use, however you should perform a fair use analysis each semester to insure that your use still falls within this exception.

**Since my use is an education it is automatically a fair use.**
No. While educational uses are heavily favored under the law, you must also carefully consider the other three factors.

**Even if my use is not a fair use I’ll probably never get caught.**
Never say never! Should your use be called into question by the rightsholder and you are found guilty of infringement you could be held liable for legal penalties of $30,000 per work/per use, attorney’s fees & litigation costs.