Is My Use Fair?:

Making Decisions About Using E-Resources in Educational Settings

"People love checklists, because they hope that the lists will do their fair-use reasoning for them . . . Professors are fully capable of making reasoned decisions about what to post to their own class sites." - Auferheide, P. & Jaszi, P. (2011) Reclaiming Fair Use: How to Put Balance Back in Copyright. Chicago: University of Chicago Press.

This is not a checklist, but rather a gathering of sources and recommendations that can clarify how to apply fair use when using electronic resources (such as journal articles, e-book chapters, and images/media from subscription databases and the free Web) in educational settings. The information and recommendations provided in the sources below should help your decision-making process on when your use of materials conforms to fair use practices (or adheres to existing licensing agreements). You may also wish to consult the Gardner-Harvey Library staff or contact the Miami University Office of General Counsel.

Key Points:

1. The Four Factors of Fair Use (U.S. Copyright Law - Section 107) should be reviewed and applied when considering to use a resource:
   - Purpose and character
   - Nature of copyrighted work
   - Amount to be used
   - Market effect
2. Review the Technology, Education and Copyright Harmonization Act (2002) (revised Sections 110(2) and 112 of the U.S. Copyright Law) for guidance, also referred to as the TEACH Act (this links to a helpful FAQ).
3. Each use and each item/resource is examined on an individual, case-by-case basis.
4. First determine how you are using the resource, more importantly than what the resource is.
5. Think reasonably about the intent of your use for educational purposes.

Recommendations:

1. **Teach It.** Think about how the use of this resource is enhancing the educational experience. Use resources wisely where it makes sense to illustrate a point, enhance student discussion, etc.
2. **Cite It.** Always be sure to give credit by fully citing each resource (including images, multimedia, journal articles etc.) This shows where the item was obtained, gives the reader information to be able to find it again in case the hyperlink changes, and models responsible scholarship.
3. **Link It.** Include the direct link (permalink or persistent link) for database resources within Niihka. This removes any question of copying a work into your class site since the work remains in the database. Questions about how to create a persistent link? Check out our easy steps for creating persistent links.
4. **Note It.** Place a copyright notice in each course stating the materials used cannot be redistributed in any form and are for the intended audience only.
5. **Check It.** Check the terms of use for the resource or database. Some databases will outline how their materials may be used in the online classroom. As well, this step relates to checking on whether the resource has an existing Creative Commons license.
6. **Open Source It.** Use Creative Commons or public domain resources for use in educational settings. Where to find these types of resources and more can be found on the University Libraries’ guide to Images and Video.
7. **Ask For It.** When in doubt about using a resource ask permission from the owner/author/publisher (the Copyright Clearance Center is one option for doing this, but you can also contact the copyright holder directly).

8. **Still not sure?** Consult with a librarian or the Office of General Counsel.

**Additional Resources:**

- **Fair Use Checklist** (document your decision making process when making fair use determinations)

- **Fair Use** (A collection of best practices documents and other tools related to fair use in education)

- **Copyright Advisory Network Resources** (digital tools for walking through copyright provisions)

- **Know Your Copy Rights: What You Can Do (PDF)**

- **TEACH Act Best Practices Using Blackboard** (An ALA interpretation of how the TEACH Act applies to the use of course management systems)

- **Copyright Information and Resources** (A variety of background documents and explanations on educational copyright considerations)

- **Fair Use** (A brief overview of Fair Use guidelines)

- **Copyright Clearance Center: Products & Solutions**

[This guide is based on a paper and guide produced by Excelsior College librarians of the Sheridan Libraries of the Johns Hopkins University, which is available at http://elpblog.library.jhu.edu/2012/04/18/presentation-article-stop-saying-no-start-empowering-copyright-role-models/]