**Copyright vs "Academic Fair Use"**

This document reviews the copyright protection of intellectual property relative to *academic fair use*. The focus is on academic fair use and proper citation procedure for copyrighted materials (especially images) which students are obtaining via the internet or scanning from print references for use in their research papers, although the principles involved apply generally to academic use for all types of copyrighted materials.

The protection given by international copyright legislation to the owners of intellectual property specifies that copyrighted material may generally only be used with the permission of the copyright owner(s). In the case of commercial use, this would generally involve the payment of royalties to the copyright owner.

Questions about copyright and academic citation do not normally arise for work published in print form, as books and journals will clearly identify the explicit copyright ownership of the contents, and academic citation procedure for print references is well-established. However, copyright questions often arise when the source material comprises digital texts, graphics, audio or audiovisual files which have been "published" on the internet, sometimes without an author or "publisher" having been clearly identified. Still further questions arise with images and audio or audiovisual files that have been 'ripped' from commercial CDs or DVDs.

**"Fair Use" and "Academic Fair Use"**

Virtually all copyright legislation provides for reasonable "fair use" of copyrighted material under certain circumstances, for example to allow a book critic to quote extracts from a book he is reviewing. The ability to include extracts from the book can be considered necessary for a book reviewer to do his job; thus "fair use" allows him the right to reproduce passages from the book without needing to obtain permission from the copyright owner or being liable for royalty payments. However, "fair use" allows the use of only small portions of a copyrighted work.

*Academic [or "educational"] fair use* extends the basic concept of "fair use" to cover, for example, scholarly research and writing within the context of higher education. Such research will often require more extensive portions of copyrighted work(s) than those allowed by basic "fair use" to enable full scholarly analysis of the work(s) in question. As with "fair use,"*academic fair use* also allows scholars to use relevant copyrighted materials in their research and writing without the need to obtain permission from the owner(s) of the copyrighted material. Examples of such scholarly research and writing would include papers written by students to meet the requirements of supervised academic instruction at Tampere University. However, even in an academic context the use of copyrighted material is subject to certain limits, which are outlined [below](http://www.uta.fi/FAST/PK6/REF/fairuse.html#criteria).

**Explicit and Inherent Copyright**

In commercially printed materials, copyright ownership is indicated via the inclusion of a copyright text and copyright symbol [©]. This may be referred to as *explicit copyright*, where the text and symbol clearly specify that the copyright belongs to the creator/author of a work of intellectual property (which may be a text, painting, digital image, film, piece of music, multimedia composition, etc.) or the current owner of the copyright, if for example an author has signed over copyright ownership to the publisher of his book, or to some other party. Copyright always belongs in the first instance to the author or creator of the intellectual property, but may be transferred to another party by explicit agreement.

The principle of *inherent copyright*, in contrast, is that all work which can be identified as the original creation of a certain author (or authors) is automatically protected by international copyright legislation as the intellectual property of the author(s). Even original work (such as "anonymous" web pages in which an author is not identified) enjoys copyright status in the abstract, and must be cited appropriately in order to avoid the risk of plagiarism.

However, a work must be original and "identifiable" in order to have copyright protection. For instance, a web page background graphic showing a [sky with clouds](http://www.uta.fi/FAST/images/sky.jpg), without any author identification or unique aspect to distinguish it from thousands of other similar graphics, would not have copyright protection. Also, a text which is so short and elementary that it could reasonably have been produced by numerous other people would not likely enjoy copyright protection. Further, to use an extreme example, a text which has copied the works of others (plagiarism, in other words) would certainly not enjoy copyright protection, even if the author was identified and a copyright symbol was present. In brief, mere existence in discrete form does not in itself establish copyright protection; the work must be distinguishable as an original creation.

Inherent copyright protection applies *automatically* regardless of whether a text includes a copyright statement or the international copyright symbol or whether the author is specifically identified. Thus for example student papers published in the *FAST* website are the copyrighted work of the student whose name appears at the top of the paper, regardless of whether the papers have either a copyright symbol [©] or a text saying that the copyright belongs to the student.

Similarly, instructional texts (such as this one) published by teachers in the *FAST* website (unless the text has been identified as having come from another source) are copyrighted to the teacher in question, even if the teacher's name may not appear on the page in question, as the identity of the teacher will be apparent in the context of the course material. Note that the copyright is not for the "facts" presented (principles of copyright and fair use, in this document); "facts" as such cannot be copyrighted. Rather, the copyright is for the teacher's original explication of the facts.

**Author vs "Publisher" Copyright; Limits on the Use of Web Materials**

In the above examples, the "publisher" would be the *FAST* Area Studies Website, Department of Translation Studies, School of Modern Languages and Translation Studies, University of Tampere, Finland. However, the copyrights for work published in the *FAST* Website belong to the authors, not to the *FAST* Program, the Department of Translation Studies, or the University of Tampere.

*FAST* web materials have been used here only as an example; the same principles apply to all other materials on the internet, unless specifically stated otherwise in those materials. The basic points thus far are that:

* All internet material is copyright-protected, regardless of whether the copyright ownership is explicitly stated;
* Thus, internet materials cannot be used "freely," nonwithstanding the ease (relative to print materials) with which digital texts, images, audio files, etc., may be incorporated into one's papers;
* However, for legitimate academic research or writing the principle of *academic fair use* does allow certain amounts and types of copyrighted material to be included in one's research or writing without the need to obtain explicit permission for this;
* Where such materials are used, they must always be appropriately cited (see [Citing Internet Sources](http://www.uta.fi/FAST/PK6/REF/i-citing.html) for examples).

**E-Mail and "Non-published Documents"**

Electronic mail also enjoys copyright protection. Information contained in e-mail messages received directly from another person is the copyrighted property of that author/sender, even if the e-mail note has not been "published" in any "permanent" public forum. This follows the principle of inherent copyright also protecting one's unpublished material. Thus student papers automatically enjoy copyright protection as soon as they exist in any format as a discrete product, for example as a digital file (before printout) on one's diskette, or as a printout which has been submitted to a teacher (but not "published" in a conventional, public format, either print or digital).

E-mail which has been sent via a public forum, such as an e-mail list, usually has the same type of author copyright, although some such forums claim copyright ownership of all messages they circulate in the sense that the forum is "publishing" individual contributions which are disseminated via its services. For citation purposes, if an e-mail note has been received via a list or similar forum, that fact must be noted and the list details included in the citation.

**What and How Much Can Be Used Under "Academic Fair Use"?**

Translation Department students are increasingly writing papers on topics which involve graphic images (photos, cartoons, posters, maps, charts, etc.) which can be obtained from the internet or scanned from print references. Is it legal to do this according to Academic Fair Use?

The answer depends in brief on how and why the sources are used. Section 107 of the U.S. Copyright Act of 1976, for example, identifies four factors to be considered when judging whether fair use will apply. These are the **purpose and character of the use, the nature, the amount** and the **effect**.

These *four factors* result in **five criteria** for academic fair use. **All five** criteria must be met for copyrighted material to be used legitimately under the provisions of academic fair use; it is **not** enough if all **but** one or two are met.

**Five Criteria That Must Be Met For *Academic Fair Use***

1. **The research or paper in question must be legitimate academic work**.
The research or paper in question must be "legitimate" academic work. While this definition is open to interpretation, a paper which is supervised by a particular instructor for a course in a recognized educational institution will almost always qualify, as the reputation of the instructor and institution support the paper's "legitimacy." Conversely, individuals without formal academic connections who are writing on their own may need to establish the "legitimacy" of their work.
2. **The material used must be directly relevant to the topic.**
The material used must be directly relevant to the explication of the paper. In the examples of the student papers cited below, the language and pictures of the cartoons were explictly discussed in the explication of the papers. Conversely, if a cartoon had not been explicitly discussed, but had been used as a decoration, illustration, or just to add color or style, this would not qualify.
3. **The source and possible copyright must be cited**
It must be clear from where the material was taken and, to the extent possible, who created it. If the material was copied from a website or scanned from a print reference, this distinction should be clear. In all cases, an citation must be given for the original source.
4. **The paper must be for non-profit educational purposes**
Academic fair use does not allow one to profit from the use of another person's copyrighted work. Normally, as in the case of papers written by Translation Department students which may be selected for the *FAST* website (or the Master's, Licentiate and Doctoral theses that are published in PDF format elsewhere in the university website), there is no question of profit or other financial benefit to the author of the paper, the website or the university, as all are non-profit educational instances.

However, if the student were later to sell copies of his paper which included copyrighted work that may have established or enhanced the market value of the paper, this would disqualify one from academic fair use. In this case the student would need to seek permission to use the copyrighted material and possibly contract for royalties payments on a proportional basis.

Moreover, if the university or *FAST* program were to charge tuition fees which included course materials, including papers in the *FAST* website which contained copyrighted extracts, or if these papers were on a website that was available only via subscription or a membership fee, this may also invalidate the *non-profit* clause. In other words if a "non-profit paper" appears in a "commercial context" this may disqualify the paper, regardless of whether the paper in its own right met the requirements for fair use.

1. **The amount of copyrighted material used must not be excessive, and must not affect the market value of the original.**
The main concern of "excessive" in this clause is that the amount of copyrighted material used must not infringe on the original author's ability to "profit" via his own work. In particular, one cannot use enough of the author's material that the paper in which this material appeared could be considered an alternative to purchasing the original work of the author.

In the paper cited below as an [example](http://www.uta.fi/FAST/PK6/REF/fairuse.html#examples), only a few cartoons were used to represent thousands which have been published in numerous volumes. The few cartoons used were enough to document the analysis being made, without infringing on the ability of the cartoonists to continue to make money via the sales of their cartoon collections. If the paper had reproduced all or most of a single volume, then conceivably a person who otherwise may have purchased the printed volume of cartoons at a bookstore could have downloaded the paper instead and gotten the "same thing." This would, at least in principle, violate the "excessive amount" clause and not qualify as academic fair use.

Similarly, the "market value" clause may allow one to use substantial extracts from or possibly even complete texts of articles from a particular newspaper, or a particular journalist from one or several newspapers. If the articles are not commercially available separately from the newspaper(s) in which they were originally published, one would probably not be infringing on either the newspaper's or the journalist's ability to make money, as one might be if one reproduced complete issues of the newspaper, or most of the journalist's entire production of articles.

[Note however that individual articles which are available at cost from a newspaper's on-line archives are an emerging problematic. In this case each article has a market value which is distinct from the newspaper as such. This has raised the question of who controls the copyright for such 'after-market' sales of archived newspaper articles (which were not anticipated or contracted for at the time of original publication) — the journalist or the newspaper?]

**The Copyright Status of Music and AudioVisual Works**

Commercially-recorded musical and audiovisual works (for example songs on CDs or DVDs, or films or television programs available via VHS or DVD, or any of these which are available directly from commercial web services) have more specific protection than text or still images.

On the basis of the last paragraph of #5 above on the "market value" of individual newspaper articles, one might assume that an analytical paper on a pop music group which had included MP3 clips of five of their 100 hits (one each of which had been 'ripped' from five different commercial CDs) that this also would not violate the "market value" clause.

But such an assumption would be wrong. While using only five of 100 songs, whether one each from 5 different CDs or otherwise, might not in itself be "excessive," each of the songs is a complete, copyrighted 'whole' that has an independent commercial value. If the band had released any of the five as singles (including as single tracks via online commercial music servers), then a reader of the web paper would be able to download the audio file(s) from the text and have an exact equivalent of what otherwise would have been purchased. The band would thus lose money. Thus violation of "market value" would disqualify the use of entire audio files under fair use even if the scholar had a legitimate use for the material in his paper, and had used only a small proportion of the band's total output (e.g. only five of 100 or more total songs).

In short, the legal status of commercial audio and audiovisual material is that each individual track of a CD, and each individual episode of a TV series, etc., is a copyrighted work in its own right. Thus *entire* works cannot be used without explicit copyright permission, which usually would require the payment of royalties. However, one *could* use a brief *excerpt*of a commercial recording — if a specific aspect of that excerpt was directly relevant to the paper being written — but not more than this unless permission has been obtained from the copyright owners.

Note that the above applies to *commercial* audio or audiovisual material. It would not apply to material that is in the public domain, or which does not have a commercial value. If you record your own digital reading of one of Shakespeare's sonnets, this can be used freely in its entirety; it is quite a different situation from ripping a sonnet which has been recorded on a commercial CD or DVD by an actor from the Royal Shakespeare Company.

**The Criteria Defining "Fair Use" Are Never Absolute**

The criteria defining "Fair Use" are not absolute. While they are adequate to establish the general principles, they are often open to varying interpretations based on the circumstances of intended use. The purpose of this document is primarily to provide guidelines for student use at Tampere University and to give a general sense of the complexities involved in defining "fair use." For additional perspectives, students may also wish to review the various guidelines, checklists and forms of the[Copyright Advisory Office](http://copyright.columbia.edu/copyright/about/director-and-staff/) of Columbia University, headed by Dr. Kenneth D. Crews, a noted figure in the field of copyright and higher education.

University libraries often also provide information on copyright and fair use, as for example with Duke University Libraries'[*Ad\* Access* digital collection](http://library.duke.edu/digitalcollections/adaccess/). On its opening page is a section on Copyright Information, especially for research and teaching. In the subsequent ['more information' on copyright](http://library.duke.edu/digitalcollections/adaccess/copyright.html) link, there is a detailed explanation of use of images from the website under 'fair use' provisions, together with examples of how to cite it.

Finally, criteria other than those mentioned above may also come into play. One such is that "fair use" implies using the copyrighted material in "good taste" — in other words, that one cannot use the material of others in such a way as to defame them, and thus cause a degradation of the "market value" of the intellectual property (or author) in question. In turn, this leads to other issues involving freedom of speech, the legality of satires or parodies, etc.

**An Example of Legitimate Academic Fair Use With Copyrighted Cartoons**

An example of legitimate academic fair use is Jenni Karonen's paper on [The Wisdom and Language of Garfield: The American Cat](http://www.uta.fi/FAST/US1/LP/garfield.html). In the paper, copyrighted cartoons were discussed which reflected aspects of language and culture. It would have been difficult to write the paper coherently without examples of the cartoons being discussed.

Karonen's paper took images from the Garfield website and also scanned cartoons from Garfield publications which Karonen owned. The citations indicate which means was used. The cartoons are intrinsic to the development of the paper. The paper text refers to each of the cartoons, and each cartoon has a caption which relates it to the paper.

While this sufficed to establish academic fair use of the images, Karonen confirmed this by contacting Paws, Inc., the owner of the Garfield copyrights. Their legal department confirmed it was indeed appropriate fair usage, but asked that she add the line: "*GARFIELD comic strips: © Paws, Inc. Used by permission*" after each image to indicate that Paws, Inc. had granted explicit permission for the images to be used in her paper, as published in the FAST website (in addition to her right to use the images via academic fair use). The copyright ownership is thus directly noted in the paper itself.

[**Top**](http://www.uta.fi/FAST/PK6/REF/fairuse.html#top)**—**[**PK6 Reference Index**](http://www.uta.fi/FAST/PK6/REF/pk6ref.html)**—**[**PK6 Citation Style Index**](http://www.uta.fi/FAST/PK6/CITEX)**—**[**PK6 Class Schedule**](http://www.uta.fi/FAST/PK6/pk6sked.html)

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