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Can A Non-profit Organization Use Copyrighted Material Without Permission For Educational Purposes?

[Kristie Prinz](#)

Q.

Can a non-profit organization designation 501(c)(6) use copyrighted material without permission from the copyright holder (using a byline only) for educational purposes for its members either through its website or through an electronic newsletter?

-- John

A.

The general rule is that copyrighted material cannot be used without permission from the copyright holder. However, the limitation on the general rule is the doctrine of fair use.

[Section 107 of the Copyright Act](#) sets forth the four factors to be considered in determining whether a particular case is a fair use:

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 relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

In the case at hand, your use of the copyrighted material clearly meets the first factor of the fair use test; however, it is impossible to say from the facts you have provided as to whether or not your intended use of the copyrighted work meets the other three factors.

With respect to the third factor, how do you know whether the amount or portion of the copyrighted work is low enough to constitute a 'fair use'?

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The Copyright Office's website states the following:

"The distinction between 'fair use' and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission."

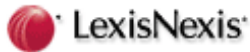
According to the 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, the following are examples of activities that the courts have regarded as fair use:

"Quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

The safest course of action is to never use another author's work without first obtaining the permission of the author. If the author's permission cannot be obtained, then it is best not use the work at all. In the alternative, your safest course of action would to adhere very closely to the fair use test, which may include reviewing prior case law for findings of fair use, in order to ensure to the extent possible that your use of a copyrighted work will fall within the doctrine of fair use.

-- *Kristie Prinz*

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