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Can A Teacher Be Found Liable For Copyright Infringement For Copying Software For Use In Her Classroom?

[Kristie Prinz](#)

Q.

If a teacher copies software for use in her classroom, could she be found liable for copyright infringement?

-- *Cindy*

A.

While this is an excellent question, it unfortunately does not have a definitive answer.

Section 106 of the Copyright Act defines the rights provided by copyright ownership:

[T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

As a general rule, if anyone other than the owner of the copyright reproduces a copyrighted work, then the act of reproducing the work would constitute an infringement of the owner's copyright. Thus, under the general rule, the teacher could be held liable for infringing the copyright in the software by copying the

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software for use in her classroom.

The doctrine of fair use, however, provides a limited exception to this rule, which may apply in this particular fact pattern. Section 107 of the Copyright Act sets forth the doctrine of fair use as follows:

[T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

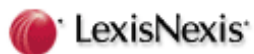
1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work. . . .

Given the fact that a teacher copying a software work for use in her classroom is copying for nonprofit educational purposes, the possibility exists that the act of copying would fall within the fair use doctrine. This would be a fact-based determination, so it would likely depend on the specific facts of each individual case of copying.

My advice is to consult a copyright attorney in your jurisdiction to discuss the specific facts of your situation. After discussing the facts with you, such an attorney should be in a position to advise as to whether or not your specific act of copying will likely constitute fair use and to give you specific advice on steps you can take to ensure that your act of copying will fall within the doctrine.

-- *Kristie Prinz*

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