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Software Training Videos: Avoiding Copyright Infringement?

[Kristie Prinz](#)

Q. If I want to create and sell an instructional/training video on how to use a company's software program, would I be infringing on software company's rights and breaking copyright laws? What should I do to ensure that there are no copyright violations?

*-- Anonymous***A.**

Based on the limited facts that you have provided in your question, it is possible that your use of the software will fall within the fair use doctrine and therefore would not constitute copyright infringement of the software.

The fair use doctrine, which was codified in [Section 107](#) of the Copyright Act (Title 17 of the U.S. Code), lists four factors to be considered in determining whether or not a particular use is "fair", which are as follows:

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

Section 107 also provides a list of uses which may constitute a "fair" use of a work, such as criticism, comment, news reporting, teaching, scholarship, and research.

Because your product would fulfill an instructional purpose, it may fall within the fair use doctrine, in which case your use of it would not constitute copyright infringement.

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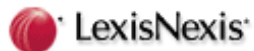
Of course, you should keep in mind that there are patents filed on some software products, and so, depending on the type of software product, the possibility exists that the software may be protected by patent law, in which case the fair use doctrine would not apply.

My advice would be to consult with an intellectual property attorney in your jurisdiction, who can discuss with you the intended use of your software in more detail and who will be able to look at the case law in your jurisdiction regarding the fair use doctrine and advise you more specifically as to whether or not the use of the software falls within the fair use doctrine. Such attorney could also advise you as to whether or not the software might be protected by patent law, and could talk with you about how you might go about getting the permission to use the software from the owner of the copyright through a license agreement, in order to minimize your reliance on the fair use doctrine in the first place.

One more point to the author of this question: you indicated in your correspondence that you were from Ontario, Canada. I have written my answer to your question from a U.S. perspective, but if you are concerned here with Canadian copyright infringement issues, then you should keep in mind that copyright laws are generally specific to individual countries, and in this case, both Canada and the United States have their own copyright laws. Thus, the answer to your question may very well be different in Canada than in the United States. I recommend that you consult with a Canadian intellectual property attorney in order to obtain further information about Canadian copyright issues.

-- Kristie Prinz

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