Test your knowledge of copyright with these scenarios: Is This Fair Use?

1. A trainer has been told by students that it is difficult to obtain reserve materials because of the large number of students enrolled. As an alternative, he scans several journal articles onto the campus network and instructs the students on how to access them so that they may complete the class assignments.

2. A trainer teaches a course in which she occasionally uses a piece of music, shows a picture, or plays a piece of videotape. She has lawfully obtained all of these materials and clearly may use them in face-to-face teaching under the Copyright Act. But the trainer would like to reproduce these short items onto one compact disk in order to prevent their loss or deterioration, keep them organized, and show them in the class by using a single piece of equipment.

3. Students in a leadership course are asked to create an “electronic term paper” using lawfully acquired resources from an institution’s library and media center. While doing research, he finds a book with just the information he needs and photocopies the bibliography and several pages of images and text. He takes the photocopies to the student computer lab and scans the material into his electronic term paper.

4. A administrator is conducting research by finding materials on the Internet and locates a report that is directly relevant to his current study. The document was made available on the Internet with the copyright owner’s permission, and the administrator had lawful access to it. For research purposes only, the administrator wants to download a copy of the document to a computer disk or print a copy on the attached printer.

5. An instructor photographs and makes slides of a number of reproductions of anatomical drawings in a book on medical training procedures. She plans to show the slides to the students enrolled in her course.
Answers

1. A problem with making text available on any network is that it can be accessible by readers far beyond the intended audience of students registered in the class. Thus, restrictions on access through passwords or other systems can enable the trainer to argue that the purpose is solely to benefit the students and not to provide access for others. By limiting the range of users, the trainer can minimize or eliminate the possibility that someone will retrieve the work from the network instead of purchasing a copy. One concern is that this cannot be controlled, since students could download, transmit and share with others with little cost or effort.

2. In general, multimedia production by faculty is allowed under fair use in the classroom for up to two years without permission. One of the complex fair-use issues has been its potential effect on the market. Even brief excerpts could erode the potential market. Also problematic is the “nature” of the different works. Some materials may be of a factual or scholarly nature and thus more amenable to fair use. Other materials used are often professional photography, music, or motion pictures that may have a significant public market.

3. Multimedia production in the hands of students solely for an individual term project will more easily pass fair-use scrutiny. Because the work is for one-time use only, and not for further reproduction, broadcast, or other dissemination, the copyright owners of the materials are not likely to find a market for licensing under these circumstances.

4. The Internet provides access to a wealth of original material and, although it is freely and easily accessible, we must assume that original materials on the Internet are protected by copyright unless we know that the copyright owner has dedicated the materials to the public domain. Therefore, the fair-use limits for materials found on the Internet are essentially the same as the fair use of materials disseminated by any other means. Single copies of short items for a person’s own study may fall within fair use. Making a copy will have little or no effect on its market.

5. This scenario is much more problematic than it appears. The purpose may be clearly educational, but when an instructor copies a photograph, he or she is reproducing the entire work of the copyright owner. Fair use seldom allows the reproduction of an entire copyright work. Further complicating the scenario is the contention that a photograph of a work (drawing) actually embodies two copyrights: the original art and the photograph of the work of art. Even if the original drawing is in the public domain, the photograph of it may be under copyright protection. If the instructor only reproduces a small number of images from one textbook with the works of many different photographers, then the adverse effect on the market may be minimized.