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## **Book Review: Copyright for Schools: A Practical Guide, 6th Edition**

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## **Copyright for Schools: A Practical Guide, 6<sup>th</sup> Edition**

By Carol Simpson and Sara E. Wolf, 2021, Libraries Unlimited, 373 pages, paperback,  
ISBN: 978-1-4408-6483-4, \$65

Review by Katherine Dickson, Copyright and Licensing Librarian, University of  
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New for 2021 is the sixth edition of *Copyright for Schools: A Practical Guide*, by Carol Simpson and Sara E. Wolf. Ms. Simpson is an attorney and former professor of library and information science, with additional experience as a school librarian, teacher, and district library administrator. Ms. Wolf is a professor in Auburn University's College of Education, with research interests in library media and technology and experience in institutional copyright policy development. The book is designed to address the copyright issues and questions that tend to arise for K-12 teachers, school librarians, and school administrators, though librarians in other contexts such as public libraries and higher education would likely find its contents useful too. The sixth edition updates previous editions by adding content on the copyright implications of streaming video services and cloud computing, issues related to disability, responding to cease-and-desist letters, openly licensed resources and Creative Commons licenses, and the implications of the Music Modernization Act. The latest edition of the book also contains a concordance (a table of legal citations and the principles for which they stand), and more robust legal citations than previous editions.

The book is well organized and easy to navigate from its detailed table of contents. Chapter 1 begins with a general history and overview of copyright law in the U.S., including the exclusive rights of copyright holders; copyright creation, duration and registration; recent copyright laws such as the Visual Artists Rights Act (VARA), Digital Millennium Copyright Act (DMCA), the Technology, Education and Copyright Harmonization (TEACH) Act, and the Music Modernization Act; copyright-adjacent laws on contract, privacy, trademark, and trade secrets; and the liability and penalties for copyright infringement that may be faced by various school stakeholders (e.g., teachers, librarians, principals, and districts). Chapter 2 turns to the public domain, and Chapter 3 addresses licensed and royalty-free materials, including a useful discussion of how Creative Commons licenses work in practice and a list of sources for royalty-free materials.



Chapter 4 covers fair use. It separates statutory fair use (the four-factor test) from the CONTU (Commission on New Technological Uses of Copyrighted Works) and CONFU (Conference on Fair Use ) guidelines, and recommends exploring both avenues when assessing whether a given use is fair. The chapter goes through each of the four fair use factors in detail, including “hidden issues” for some factors (e.g., transformativeness and bad faith for factor one; “essence of the work” for factor three, and misrepresentation for factor four). The chapter recommends consulting with the school librarian for copyright questions.

Chapters 5 through 8 turn to the use of specific types of materials in schools. Chapter 5 covers print materials, with detailed discussion of the U.S. Copyright Office’s Circular 21 on reproduction of copyrighted works by educators and librarians and the Kastenmeier Report, as well as print permissions, special rules for consumable materials, and use of periodicals, graphics, and scanners. Chapter 6 focuses on audiovisual materials including movies, television, web transmissions, and sound recordings, distilling the law governing performance or display of works in face-to-face teaching into a useful five-question checklist, with guidance on what to do if any item on the checklist is not met as well as discussion of specific hypotheticals; special attention is given to interpreting terms of service for streaming services and digital downloads, as well as tracking public performance rights. Chapter 7 deals with print and recorded music materials, including reproduction of sheet music and recorded music, musical performances and adaptations, dealing with performance rights organizations, permissions and licenses, and finding affordable background and clip music. Chapter 8 focuses on multimedia and the CONFU guidelines, with discussion of collections versus adaptations, retention and access to multimedia programs, quantity limits, attribution, and other restrictions.

Chapter 9 covers special copyright rules related to distance education, specifically those laid out in the TEACH Act and the specific responsibilities it places on educational policymakers, information technology staff, and instructors. Chapter 10 deals with copyright issues related to internet use more generally, such as printing from the internet, bookmarking and linking, email and chat, social media, podcasts, photo sharing sites, blogs, e-books, streaming video and audio services, and cloud computing, as well as the DMCA’s treatment of schools and how to deal with

takedown notices. Chapter 11 addresses computer software use in schools, including infringing uses and public domain and open source software.

Chapter 12 discusses the special copyright exemptions for school libraries, including those related to preservation, interlibrary loan and the CONTU Guidelines, use of photocopiers in libraries, reserves and electronic reserves. Chapter 13 covers exemptions for students with disabilities, including copying, closed captioning, and the interaction of these exceptions with fair use.

Chapter 14 deals with “copyright misconceptions,” including a discussion of how copyright law intersects with contract law with a brief primer on contract law, an explanation of licenses as contracts, first sale doctrine, and the difference between copyright infringement and plagiarism. Chapter 15 offers guidance on requesting permission in situations where fair use or a copyright exception do not apply, with specific tips on researching copyright holders, writing permission letters, and securing permissions from students and their parents.

Chapter 16 turns from copyright law principles to copyright management for schools; it recommends that school librarians and technologists situate themselves as copyright “consultants” rather than “copyright police,” leaving the latter job to the school principal. A section on “managing things” covers copyright notices and other risk mitigation for print, video, audio, software, hardware, and internet, and a section on “managing people” covers risks presented by students, teachers, staff, and administrators, with strategies for training those groups in proper use of copyrighted materials.

Chapter 17 offers guidance on responding to copyright violation notices, including cease-and-desist letters and formal lawsuits. Chapter 18 focuses specifically on copyright recommendations for school administrators such as creation of a comprehensive copyright policy and copyright compliance education for faculty and staff. Finally, Chapter 19 offers guidance on creation of an institutional copyright policy.

The book’s appendices offer practical and usable supporting documents, including a sample copyright compliance agreement, copyright “dos and don’ts” for schools, copyright for kids, sources of information on copyright, sample copyright warning notices, a sample copyright policy, sample publication and photo/video release

forms, copyright and plagiarism guidelines for students, guidance on using copyrighted materials in PowerPoint presentations, references to specific sections of the copyright law, a bibliography and list of links for reading on copyright, contact information for sources of videos with public performance rights, link to a database of copyright actions against schools, a reproducible brochure of copyright questions and answers, a copyright infringement reporting form, an agreement to translate, and a brochure on open educational resources. These supporting materials are thoughtfully chosen and arranged, and could easily be put to use by a teacher or librarian in a real-life scenario.

A concordance at the end of the book lists significant copyright cases in alphabetical order, with “landmark” cases presented in bold, and a brief description of the copyright principle for which each case stands. The same cases are then presented in a chart of major copyright concepts (fair use, license, first sale, etc.). The concordance makes these important cases accessible to non-copyright specialists who might be preparing to discuss or advocate for their copyright needs, and offers a helpful jumping-off point for readers with an interest in a deeper understanding of the nuances of copyright case law.

Throughout the book are sidebar Q&A boxes which the authors call a “copyright catechism,” that provides sample hypothetical situations relevant to each specific topic, mostly involving different types of copying by school employees, along with answers as to whether the described activity constitutes copyright infringement or permissible use of copyrighted materials, and suggestions for how the various uses might be brought into compliance with copyright law. The concordance reproduces all of these questions in list form, with page references for the answers, making for a quicker reference tool. Readers will find these real-life scenarios useful as they work through the complexities and confusions of black-letter copyright law applied in the educational setting.

The book is thorough, well-researched and supported by extensive citations to the law. By its own description, it does take a fairly conservative approach to copyright and fair use in the educational context, generally erring on the side of risk aversion and taking the “safest position” in its descriptions of legal principles and answers to

its Q&As.<sup>1</sup> At the same time, however, it also offers moments of encouragement, for example advising readers, “don’t feel so frightened of copyright that you fail to employ every available opportunity to provide resources to your students, teachers, and colleagues.”<sup>2</sup> This tension appears throughout the book, and will be familiar to many in the book’s intended audience--a desire to avoid copyright risk on the one hand, while wishing to make educational materials broadly available on the other. In some instances the book takes the former approach farther than many educational copyright specialists would--for example, in the chapter on fair use, it takes the position that “fair use is not a right given to educators or any other person. Fair use is a defense applied in court to a charge of infringement,”<sup>3</sup> despite the fact that the relevant sections of the copyright law clearly state that “the fair use of a copyrighted work... is not an infringement of copyright,” and refer specifically to the “right of fair use.”<sup>4</sup> The section on writing permission letters also implies that one cannot make a fair use of copyrighted material after being turned down for permission: “You are free to decline to pay for the permission, but in that case you may not use the material...It is much more difficult to make a cognizable claim of fair use if you first try to negotiate a license. The rationale is, if you believed the use was fair, why would you try to get a license?”<sup>5</sup> In reality, a teacher or librarian may have legitimate reasons to request permission even while believing that their use would be fair, and the case law would support them in making a fair use of the requested materials even after being denied permission--in *Campbell v. Acuff-Rose Music*, the Supreme Court stated that the defendant’s request for permission did “not necessarily suggest that they believed their version was not fair use; the offer may simply have been made in a good faith effort to avoid this litigation. If the use is otherwise fair, then no permission need be sought or granted. Thus, being denied permission to use a work does not weigh against a finding of fair use.”<sup>6</sup> An educator may request permission for many reasons, and may later make a fair use of the same

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<sup>1</sup> xix. “This monograph presents the safest position--that level of practice considered to be within legal limits by the most conservative application of the law. Certainly you might choose to stretch the recommendations, and you might never be challenged. In some instances, the recommended practices might even be considered ultraconservative.”

<sup>2</sup> *Id.*

<sup>3</sup> 56.

<sup>4</sup> 17 U.S.C. § 107; 17 U.S.C. § 108(f)(4). At the same time, however, it does encourage readers to exercise their fair use rights: “Keeping the maximum fair uses available to educators is essential if they don’t wish to enter a period when fair use is abandoned in favor of licensing.” 57.

<sup>5</sup> 254.

<sup>6</sup> 510 U. S. 569, 585 FN 18 (1994).

material--including by tailoring their use more narrowly when presented with an unaffordable license fee.

The overall tone of the book may tend toward instilling a fear of copyright law in some places--for example, in the first chapter on general copyright law: "If you feel that Washington is too far away to be a threat, what about your local school board? The penalty for violating a school board policy can be loss of your job. If Washington doesn't frighten you, perhaps the fear of being caught violating board policy would."<sup>7</sup> Readers should be aware of this conservative bent, and may wish (in consultation with their organization's general counsel) to supplement their copyright reference materials with additional guides and handbooks that take a more liberal approach, in order to find a risk tolerance that makes sense for their own circumstances and constituents.<sup>8</sup> The book does a good job of representing the conservative end of that spectrum.

Kate Dickson is the Copyright & Licensing Librarian at UNC Charlotte. Prior to attending library school at UNC Chapel Hill, she practiced law for seven years in Washington, D.C. and Chapel Hill, NC. She received her JD and MA in American Legal History from the University of Virginia.

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<sup>7</sup> 37.

<sup>8</sup> Examples include: Kenneth D. Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions*. ALA Editions, 2020; the American Library Association's copyright resources (<https://www.ala.org/advocacy/copyright>); and Creative Commons' resources on open education (<https://creativecommons.org/about/program-areas/education-oer/>).