

## **Use and Duplication of Copyright Materials Procedures**

### Limitations on Exclusive Rights: Fair Use

Many provisions of the federal copyright law affect the educational uses of copyrighted materials but the most generally applicable section is Section 107 – Fair Use. “Fair Use” applies four basic standards, which must be considered together when judging whether or not there has been a copyright infringement:

1. The purpose and character of the use. Is the copying being done for commercial or educational purposes?
2. The nature of the copyrighted work. Was the original work intended to be consumable?
3. The amount of sustainability of the portion used in relation to the copyrighted work as a whole. How much is being copied? How important is the copied part to the entire work? How many copies are being made?
4. The effect of the use upon the potential market for or value of the work. Will the copyright owner suffer financial loss?

### Specific Copyright Guidelines for Instructional Materials

The following copyright guidelines are not comprehensive and do not absolve the staff from complying with all aspects of the law.

#### **1. Print, Music and Audiovisual Materials**

- a. According to the concept of “fair use” as outlined above, a single copy of any of the following made by or at the individual request of a staff member for research or use in teaching:
  - i. A chapter from a book
  - ii. An article from a periodical or newspaper
  - iii. A short story, short essay or short poem whether or not from a collective work
  - iv. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper
- b. Multiple copies (not to exceed more than one copy per student) may be made by or at the request of an individual staff member for classroom use provided:
  - i. The copying meets the tests of brevity and spontaneity as defined in Section F below.
  - ii. The copying meets the cumulative effect test as defined in Section F below.
  - iii. Each copy includes a notice of copyright.
- c. Notwithstanding any of the above, the following shall be prohibited:
  - i. Copying of or from works intended to be “consumable” including but not limited to workbooks, exercises, standardized tests, answer sheets.
  - ii. Copying to create or replace anthologies.
  - iii. Copying to substitute for the purchase of material.
  - iv. Copying directed by a higher authority, which would violate these guidelines.

- v. Repeated copying of the same item by the same staff member from term to term.

**2. Video Recordings**

- a. Copies of any of the following video recordings may be made by or at the individual request of a staff member for classroom use:
  - i. “In house” productions
  - ii. Uncopyrighted works or works in the public domain
  - iii. Copies made under “permission to copy” arrangements
- b. The following broadcast television programs may be copied off-air by or at the individual request of a staff member for classroom use:
  - i. Instructional television programs (subject to any specific rights limitations)
  - ii. Broadcast programs provided they are used within 10 school days of the original broadcast.
  - iii. Programs with specified “permission to copy” arrangements
- c. Programs may be copied off cable television only if permission to use a given program has been granted to all educators, or specifically to an individual teacher who has requested said permission. The publication Cable in the Classroom should be used to determine which, if any, rights have been granted for educational use.
- d. Take the above into consideration, the following shall be prohibited:
  - i. Copying from premium channels (HBO, The Disney Channel, Showtime, Cinemax etc.) or nonbroadcast channels (ESPN, MTV, Nickelodeon, Arts and Entertainment etc.)
  - ii. Duplicating copyrighted video recordings
  - iii. Copying from one format to another (VHS to DVD etc.)
  - iv. Copying off-air or cable programs for the purpose of entertainment or reward.
  - v. Copying programs off broadcast or cable television at home for use in school, except as allowed in item (b) of this section.
  - vi. Using illegally obtained copies of video recordings in a school setting.
- e. Rented or purchased “Home Use Only” video recordings may be used in the classroom as part of face-to-face instruction only. They may not be used for the purpose of entertainment or reward.
- f. The viewing of video recordings with “Public Performance Rights” is not restricted.

**3. Computer Software**

- a. Section 117 of the copyright law grants to the purchaser the right to copy a computer program if and only if:
  - i. Such a copy is an essential step in the utilization of the program in conjunction with a machine; or
  - ii. The copy is for archival purposes.
- b. The following computer software may also be copied by or at the individual request of a staff member for classroom use:
  - i. “In house” productions
  - ii. Uncopyrighted works or works in the public domain
- c. Material may be digitized using a computer scanner or similar device, if it is uncopyrighted work or a work in the public domain, or if it meets the “fair use” test outlined in Section A above.
- d. Material may be uploaded or downloaded, if it is uncopyrighted work or a work in the public domain or if it meets the “fair use” test outlined in Section A above.
- e. Notwithstanding the above, the following shall be prohibited:
  - i. Copying copyrighted programs on District equipment.
  - ii. Using illegal copies of copyrighted programs on District equipment.
  - iii. Purchasing programs designed primarily as “break and entry” tools with District, state or federal funds.
  - iv. Booting single copies of copyrighted programs into more than one machine without authorization from the copyright holder.
  - v. Using “archival” copies of software as additional copies.
  - vi. Digitizing copyrighted material without permission from the copyright holder, using a computer scanner or similar device regardless of whether the copyrighted material is textual, graphic, photographic, video, audio or any other medium.
  - vii. Downloading any copyrighted material without permission from the copyright holder from the World Wide Web or other sources.
  - viii. Making copies of downloaded (or uploaded) material on other computer storage mediums, such as by copying a downloaded file onto a computer disk or hard drive, without permission from the copyright holder.
- f. Staff members shall also adhere to state law provisions concerning the copying of data, information and computer programs or supporting documentation.

**4. Music**

- a. Permissible uses include:
  - i. Emergency copying to replace purchased copies, which are unavailable for an imminent performance.
  - ii. Making copies of excerpts of works for academic purposes.
  - iii. Editing or simplifying purchased works provided that the fundamental character of the work is not changed.

- iv. Making a single copy recording of a student performance.
  - v. Make a single copy of a copyrighted sound recording for the purpose of an aural exercise or examination.
- b. Notwithstanding the above, the following shall be prohibited:
- i. Copying to create or replace anthologies.
  - ii. Copying of or from works intended to be “consumable” including but not limited to worksheets, exercises, test and answer sheets.
  - iii. Copying for the purpose of performance, except for emergency use allowed in item (a) (i) of this section.
  - iv. Copying to substitute for the purchase of material.
  - v. Copying without the inclusion of the copyright notice.

## **5. Libraries**

- a. According to the proviso of Section 108 of the copyright law, a library or any of its employees acting within the scope of their employment may reproduce copies of print works and phonorecords under the following specific circumstances:
- i. Purposes of preservation
  - ii. Purposes of private student, scholarship or research
  - iii. Purposes of interlibrary loan
- b. Notwithstanding any of the above, the following shall be prohibited:
- i. Copying for direct or indirect commercial advantage.
  - ii. The systematic reproduction for distribution of single or multiple copies.
  - iii. Copying to substitute for a subscription to a work or the purchase of a work.
- c. The provision under Section 108 do not apply to musical, pictorial, graphic, sculptural, motion picture or audiovisual works.
- d. Copies made under the proviso of Section 108 for interlibrary loan must include the notice of copyright.
- e. A library that requests reproductions of print or phonorecords via interlibrary loan must make certain that its requests conform to the National Commission on New Technological Uses of Copyrighted Works (CONTU) Guidelines and must maintain records of its requests for the required number of years.
- f. Libraries must display prominently, at the place where orders for reproductions are accepted, a warning that copying will be done in accordance with the copyright law.
- g. Reproducing equipment located on the premises must display the proper notice that the making of a copy may be subject to the copyright law.

### Additional “Fair Use” Guidelines for Educational Multimedia

1. **Student Use:** Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

2. Use By Educators for Curriculum-Based Instruction: Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support of curriculum-based instructional activities.
3. Permitted Uses of Educational Multimedia Projects: Uses of educational multimedia projects created under these guidelines are subject to the time, portion, copying and distribution limitations listed in Section 4 below.
  - a. Students may perform and display their own educational multimedia projects created under Section 1 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews.
  - b. Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:
    - i. Face-to-face instruction
    - ii. Assigned to students for directed self-study
    - iii. Remote instruction to students enrolled in curriculum-based courses and located at remote sites provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and program (such as a password) and provided further that the technology prevents the making of copies of copyrighted material.
    - iv. If the educational institution's network or technology used to access the program cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects created under Sections 1 and 2 of these guidelines over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the educational multimedia project.
  - c. Educators may perform or display their own educational multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.
  - d. Educators may retain educational multimedia projects created under Section 2 of these guidelines for later personal uses such as tenure review or job interviews.
4. Limitations – Time, Portion, Copying and Distribution: The preparation of educational multimedia projects incorporating copyrighted works under Sections 1 and 2, and the use of such projects under Section 3, are subject to the limitations noted below.

- a. **Time Limitations:** Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects noted in Section 3.
  
- b. **Portion Limitations:** Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. In the aggregate means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retain under Sections 3 and 4 should comply with the portion limitations in this section.
  - i. **Motion Media** – Up to 10 percent or three minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational multimedia project created under Sections 1 and 2 of these guidelines.
  - ii. **Text Material** – Up to 10 percent or 1,000 words, whichever is less, is the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project created under Sections 1 and 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.
  - iii. **Music, Lyrics and Music Video** – Up to 10 percent, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Sections 1 and 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.
  - iv. **Illustrations and Photographs** – The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but not more than five images by an artist or photographer may be reproduced or created under Sections 1 and 2. When using photographs and illustrations from a published collective work, not more than 10 percent or

- 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Sections 1 and 2 of these guidelines.
- v. Numerical Data Sets – Up to 10 percent or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under Sections 1 and 2 of these guidelines. A field entry is defined as a specific item of information, such as a name or social security number, in a record of a database file. A cell entry is defined as the intersection where a row and column meet on a spreadsheet.
- c. Copying and Distribution Limitations: Only a limited number of copies, including the original, may be made of an educator’s education multimedia project. For all of the uses permitted by Section 3, there may be no more than two copies only one of which may be placed on reserve as described in Section 3(b). An additional copy may be made for preservation purposes but may only be used or copied to replace a copy that has been lost, stolen or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3(c) and 3(d) for educators and in Section 3(a) for students.

#### Examples of When Permission is Required

1. Using Multimedia Projects for Non-Educational or Commercial Purposes: Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.
2. Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines: Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing them beyond the limitations listed in Section 4c.
3. Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines: Educators and students may not use their personally created educational multimedia projects over electronic networks, except for use as described in Section 3(b), without obtaining permissions for all copyrighted works incorporated in the program.

#### Important Reminders

1. Caution in Downloading Material from the Internet – Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

2. Attribution and Acknowledgement – Educators and students are reminded to credit the sources and display the copyright notice and copyright ownership information if this is shown in the original source, for all works incorporated as part of educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher and place and date of publication). The copyright ownership information includes the copyright notice, year of first publication and name of the copyright holder.
3. The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g., credit section) except for images incorporated into the project for the uses described in Section 3(b). In such cases, the copyright notice and the name of the creator of the image must be incorporated in the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional object (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.
4. Notice of Use Restrictions – Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of the federal copyright law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.
5. Future Uses Beyond Fair Use – Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not a commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.
6. Integrity of Copyrighted Works – Alterations – Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.
7. Reproductions or Decompilation of Copyrighted Computer Programs – Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.



8. Licenses and Contracts – Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

Definitions

1. Brevity
  - a. Poetry – A complete poem if less than 250 words and if printed on not more than two pages. If from a longer poem, an excerpt of not more than 250 words.
  - b. Prose
    - i. A complete article, story or essay of less than 2,500 words; or,
    - ii. An excerpt from a prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.
    - iii. Each of the numerical amounts stated above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.
  - c. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book per periodical issue.
  - d. “Special Works” – Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations (i.e. picture books) fall short of 2,500 words in their entirety. However, not more than two of the published pages and containing not more than 10 percent of the words found in the text thereof, may be reproduced.
2. Spontaneity
  - a. The copying is at the instance and inspiration of the individual teacher.
  - b. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
3. Cumulative Effect
  - a. The copying of material is for only one course in the school in which the copies are made.
  - b. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
  - c. There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated shall not apply to current news periodicals and newspapers and current news selections of other periodicals.)