

Copyright and Fair Use Guidelines

Knowing the Law

It is essential for everyone involved in setting school policy or overseeing day today copyright decisions to be familiar with the laws waning copyright, as well as with the most common interpretations of these laws as they relate to education. The library media center, by way of the library media specialist, will inform staff through the teacher handbook and through in-service of major provisions of the copyright law as they relate to copying for educational purpose. However, school employees, except for the Board Attorney, will not supply legal advice. The information that follows is meant to provide a broad overview and help to direct library media specialists to documents that should be studied in greater dept.

Copyright Law PL 94-553 Title 17, United States Code

The US Constitution (in Article I, Section 8) grants the federal government the power to set copyright Law. The current law, Copyright Act of 1976, is contained in Title 17 of the US Code. The following excerpts are from sections of Title 17 that are of particular interest to educators.

Section 102 – Definition of Copyright

This section defines copyrightable materials as "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated." It lists some types of works that qualify (literary, musical, pictorial, audiovisual, etc) but makes it clear that these are just examples- It also lists some examples of things that can not be copyrighted (including ideas, procedures, concepts).

Section 106 - Rights of a Copyright Owner

This section outlines five basic rights granted to the creator of the copyrighted work

1. The right to reproduce or copy the work;
2. The right to prepare derivative works (e.g., adaptations, altered versions);
3. The right to sell or distribute copies of the work to the public;
4. The right to perform the work publicly;
5. The right to display the work publicly.

This section also states that these rights; belong exclusively to the copyright owner except when they are curtailed by the limitations and the exemptions outlined in Sections 107 through 118 of the copyright law.

The creator of the work owns these five rights, subject to limitations called "fair use."

Section 107 – Fair Use Guidelines

This section explains one of the most significant limitations on the exclusive rights of the copyright owner - that of fair use. Fair use provisions of the copyright law grant certain types of users conditional rights to use or reproduce certain copyrighted materials as long as the reproduction or uses of those materials meet defined guidelines. Fair use balances quite finely the free use of copyrighted materials by educators and the rights of the author to sell his

words and expressions of his ideas. Fair use is said to apply to such cases as "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" The burden of proving fair use falls to the educator using the material so thorough knowledge of the copyright law and associated guidelines is essential for library media specialists and educators using copyrighted work

In determining whether the use made of a copyrighted work is a fair use, the following four factors need to be considered:

1. the purpose and character of the use (e.g., whether such use is commercial or for nonprofit educational purposes);
1. the nature of the copyrighted work (e.g. whether it is factual or fictional – with reproduction on nonfiction more likely to qualify as fair use than reproduction of an original work of fiction);
2. the amount and substantiality of the portion used in relation the work as a whole;
3. the effect of the use upon potential market for or value of the work.

Section 110 – Public Performance

Section 110 focuses on the circumstances under which work may be performed or displayed publicly even if they are not licensed for this purpose (e.g., a video tape purchased with a FOR HOMEUSE ONLY notice). For educators, one of the most significant portions of this section is clause (I), often referred to as the "face-to-face teaching exemption." This grants teachers or students in a nonprofit educational institution the right to perform or display legally purchased works in the course of instruction in a classroom setting.

Section 117 – Copyrighted Software

This section was amended in December 1980, to focus on the duplication of copyrighted software by purchasers of that software. This section defines two circumstances under which such duplication is legal:

1. when the creation of a copy is an essential step in allowing the software to run on a particular computer; or
2. when the copy is created for archival purposes only (to be stored away and used only if the original fails) with the understanding that it will be destroyed "in the event that continued possession of the computer program should cease to be rightful."

Interpretations and Guidelines

Videotapes

The copyright law clearly protects the use of audiovisual works such as videotapes. Since ownership of a physical object is different than ownership of the copyright therein, guidelines

are necessary to define what libraries can do with the videotapes they own without infringing on copyright. If a particular use would be an infringement, permission can always be sought from the copyright owner.

A. In-classroom Use:

In-classroom use of a copyrighted videotape is permissible under the following conditions:

1. The performance must be by instructors (including guest lecturers) or by pupils; and
2. the performance is in connection with face-to-face teaching activities; and
3. the entire audience is involved in the teaching activity; and
4. the entire audience is in the same room or same general area; and
5. the teaching activities are conducted by a nonprofit educational institution; and
6. the performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium, or workshop; and
7. the videotape is lawfully made; the person responsible had no reason to believe that the videotape was unlawfully made.

B. Loan of Videotapes:

1. Videotapes labeled "For Home Use Only" may be loaned to patrons for their personal use. They should not knowingly be loaned to groups (outside the school settings) for public performance.
2. Copyright notice as it appears on the label of a videotape should not be obscured.
3. Video recorders may be loaned to a patron without fear of liability even if the patron uses the recorder to infringe a copyright. However, it may be a good idea to post notices on equipment which may be used for copying to assist copyright owners in preventing unauthorized reproduction, such as: MANY VTDEOTAPED MATERIALS ARE PROTECTED BY CORPYRIGHT LAW. TITLE 17 U.S. CODE.7 U.S. SECTION 101. UNAUTHORIZED COPYING MAY BE PROHIBITED BY LAW.

C. Duplication of Videotapes:

1. Under limited circumstances, libraries may duplicate a videotape or a part thereof, but the rules of Section 108 which library media specialists routinely utilize with respect to photocopying, apply to the reproduction.

Guidelines for Video recording of Broadcast Programming for Educational Purposes (Congressional Record, October 14, 1981, pp. E4750-E4752).

Educators should be aware that off-air videotaping for classroom use remains a very a controversial issue in the application of copyright law. In accordance with the fair use doctrine,

nonprofit educational institutions may record television programs and use these recordings for instructional purposes. Such practices, however must meet the following guidelines:

1. The guidelines were developed to apply only to off-air recordings by nonprofit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first 45 consecutive calendar days after the recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction during the first 10 consecutive school days in the 45 calendar day retention period. "School days" are school session days - not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions within the 45 calendar retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate need of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first 10 consecutive school days, off-air recordings may be used up to the end of the 45 calendar day retention period only for teacher evaluation purposes (i.e., to determine whether or not to include the broadcast program in the teaching curriculum) and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teacher anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Guidelines for School Use of Rented or Purchased Prerecorded Videocassette Programs

Section 110(1) of the copyright law provides educators with the right to use copyrighted material for instructional purposes without consent of the author. This limitation on the copyright owner's exclusive right encompasses the use of prerecorded videocassette programs in an instructional setting. Section 110(1), "Limitations on Exclusive Rights, Exemptions of Certain Performances and Displays" states:

-the following are not infringements of copyright: performances or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction.

Photocopying

The copyright "rule of thumb" with photocopies is spontaneity and brevity. These assume the teacher has not had time to receive permission or purchase the rights.

Single Copying for Teachers:

- A. For class preparation or library reserve, a teacher may make one copy of:
 - 1. a chapter from a book;
 - 2. a periodical or newspaper article;
 - 3. a short story, poem, or essay, whether or not from a collective work;
 - 4. a chart, graph, diagram, drawing, picture, slide, or cartoon (if the original cartoon itself is not copyrighted).

Multiple Copies for Classroom Use:

- B. Teachers may make multiple photocopies for classroom use (not exceeding one copy per student) of the following, provided that the copying meets the tests of spontaneity and brevity as stated here:
 - 1. a poem under 250 words or an excerpt from a poem
 - 2. an article of less than 2,500 words
 - 3. an excerpt of 1,000 words or 2,500 (whichever is less) of an article longer than 2500 words.
- C. The copies must be for one course only and each copy includes a notice of copyright
- D. Teachers cannot make multiple copies of:
 - 1. more than three authors from a collective work
 - 2. more than one work by an author
 - 3. more than nine times per term
- E. Teachers cannot make multiple copies to substitute for an anthology, compilations, or collective works without permission.
- F. B. Teachers cannot copy any consumable works without permission, such as:

1. workbooks
2. exercises
3. standardized tests
4. test booklets

Sound Recordings

In using sound recordings, such as cassette tapes, CDs, or records, teachers:

1. cannot tape selections from various recordings to substitute for a collection or anthology.
2. can make a copy of a sound recording for archival purposes.
3. cannot convert formats - that is, one cannot duplicate a record onto a cassette tape
4. cannot narrate an entire story onto a cassette tape

Slides and Transparencies

Teachers can make slides and transparencies from photographs in periodicals, books, and encyclopedias as long as they do not exceed one photograph from any one source.

Educational Music

Guidelines for the five types of permissible minimum uses of music as included in HR 94-1476 state:

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. (a) For academic purposes other than performance, multiple copies of excerpts of work may be made, provided that the excerpts do not compromise a part of the whole which would constitute a performable unit such as a section, movement, or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one per pupil.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.); that is,
 1. confirmed by the copyright proprietor to be out of print, or
 2. unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics if any, altered, or lyrics added if none exist
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a cassette tape, CD, or record) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purposes of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording).

FAX Machines

Libraries are increasingly using FAX machines for interlibrary loan. Libraries are in compliance with the copyright law if they only reproduce and distribute one copy of copyrighted material subject to the following constraints:

1. the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
2. the collections of the library or archives are:
 - a. open to the public, or
 - b. available not only to researchers affiliated with the library or archives, or with the institutions of which is a part, but also to other persons doing research in a specialized field; and
3. the reproduction or distribution of the work includes a notice of copyright.

Educational Multimedia Projects Using Portions of Copyrighted Works

Background:

Educators have traditionally brought copyrighted books, videos, slides, sound recordings, and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact education tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. The following guidelines apply the principles of fair use when teachers and students create their own multimedia projects to meet specific instructional objectives. These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by teachers or students as part of a systematic learning activity. Educational multimedia projects created under these guidelines incorporate students' or teachers' original material together with various copyrighted media formats including but not limited to motion media, music, text materials, graphics, illustrations, photographs, and digital software which are combined into an integrated presentation.

Educational Multimedia Projects by Students:

1. Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.
2. Students may perform and display their own educational multimedia projects for use 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 use, such as job and graduate school interviews.

Educational Multimedia Projects by Teachers

1. Teachers may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia project for their own teaching tools in support of curriculum-based instructional activities.
2. Teachers may perform and display their own educational multimedia projects for curriculum-based instruction to students in the following situations:
 - a. for face-to-face instruction;
 - b. assigned to students for directed self study.
 - c. for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the 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 educational multimedia project (such as a password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.
 - d. for presentations to their peers at workshops or conferences
 - e. for personal portfolios for later personal use such as tenure review or job interviews.

Limitations – Time, Portion, Copying, and Distributing:

1. Time Limitations:

Teachers may use their educational multimedia projects created for educational purposes 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.

2. Portion Limitations:

Portion limitations means 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. These limitations apply cumulatively to each teacher's or student's multimedia project(s) for the same semester, cycle, or term. All students should be instructed about copyright. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portions limitations in their independent development of educational multimedia projects.

3. 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

4. Text Material:

Up to 10 percent or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project. 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 or any anthology may be used. For poems of greater length, 250 words may be used but not more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

5. 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 part of a multimedia project. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

6. 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 no more than five images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project. 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.

7. 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. 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 a column meet on a spreadsheet.

8. Copying and Distribution Limitations:

Only a limited number of copies, including the original may be made of a teacher's educational multimedia project. For all of the uses permitted, there may be no more than two copies, only one of which may be placed on reserve. An additional copy may be made for preservation purposed but may only be used or copied to replace a used 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 previously stated purposes described for students and teachers.

When Permission is Required:

1. Teachers and students must seek individual permission (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution

2. Even for educational uses, teachers and students must seek individual permission for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations.
3. Teachers and students may not use their personally created educational multimedia projects over electronic networks, except for uses as previously described without obtaining permissions for all copyrighted works incorporated in the program.

Important Reminders:

1. Caution in Downloading Material From the Internet:

Teachers 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 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 Acknowledgment:

Teachers and students are reminded to credit the source and display the copyright notice and copyright information if this is shown in the original source. Crediting must adequately identify the source of the work giving full bibliographic description where available (including author, title, publisher, place, and date of publication). The copyright ownership information includes the copyright notice (© year of first publication, and name of the copyright holder).

3. Notice of Use Restrictions:

Teachers and students are advised that they must include, on the opening screen of their educational multimedia projects and any accompanying print material, a notice that certain materials are included under the fair use exemption of the US. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.

4. Future Uses Beyond Fair Use:

Teachers and students are advised to note that if there is a possibility that their own educational multimedia projects incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as a commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than wait until after the completion of the project

5. Integrity of Copyright Works: Alterations

Teachers 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. Teachers and students are advised to note that alterations have been made.

6. Reproduction or Decompilation of Copyrighted Computer Programs

Teachers 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 mechanism, even for educational uses, are outside the scope of these guidelines.

7. Licenses and Contracts

Teachers 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.

Computer Software

Computer software and accompanying manuals are protected by copyright laws. Although it is legal to make a backup copy of software, it is illegal to loan or distribute the original software, the backup copy, or manual without a license. If multiple copies are needed by a school, then that school should investigate the acquisition of site licenses.

It is the responsibility of site administrators to ensure observances of copyright laws.

Reproductions of Computer Software – Section 7(6) 10(b)

1. Teachers may make a backup copy of a computer program for archival purposes. If the copy in use is destroyed or damaged, the archival copy can be used and the original would need to be re-purchased if another archival copy is to be made.
2. Teachers may adapt a program, but
 - a. cannot copy, give away, or sell an adaptation of a program, and
 - b. cannot make multiple copies of adaptations for institutional use
3. Copyrighted programs may not be reproduced on school equipment except for those for which rights have been procured. If the machine is capable of being used to make a copy of a program, a warning should be posted on the machine

Fair Use Chart for Teachers

Work or Materials to be used for Educational Purposes	Fair Use Restrictions for Face-to-Face Teaching	Illegal Use without Explicit Permission from Creator/Author
Chapter in a book	<p>Single copy for teacher for research, teaching, or class preparation.</p> <p>Multiple copies (one per student per class) okay if material is (a) adequately brief, (b) spontaneously copied, (c) in compliance with cumulative effect test.</p> <p>Copyright notice and attribution required.</p>	<p>Multiple copies used again and again without permission.</p> <p>Multiple copies to create anthology.</p> <p>Multiple copies to avoid purchase of textbook or consumable materials.</p>
Newspaper/magazine article	Same as above.	Same as above
Prose, short story, short essay, Web article	<p>Multiple copies of complete work of less than 2,500 words and excerpts up to 1,000 words or 10% of work, whichever is less.</p> <p>For works of 2,500-4,999 words, 500 words may be copied.</p>	Same as above
Poem	<p>Same as for first item.</p> <p>Multiple copies allowed of complete poem up to 250 words -- no more than two printed pages.</p> <p>Multiple copies of up to 250 words from longer poems.</p>	Same as above
<p>Artwork or graphic image -</p> <p>chart, diagram, graph, drawing, cartoon, picture from periodical, newspaper, or book, Web page image</p>	<p>Same as for first item.</p> <p>No more than 5 images of an artist/photographer in one program or printing and not more than 10% or 15% of images from published collective work, whichever is less.</p>	<p>Same as first item</p> <p>Incorporation or alteration into another form or as embellishment, decoration for artistic purposes for other than temporary purposes.</p>
<p>Motion media -</p> <p>film and videotape productions</p>	<p>Single copy of up to 3 minutes or 10% of the whole, whichever is less.</p> <p>Spontaneity required.</p>	Multiple copies prohibited. Incorporation or alteration into another form as embellishment for artistic purposes for other than temporary purposes prohibited.
<p>Music</p> <p>-sheet music, songs, lyrics, operas, musical scores, compact disk, disk, or cassette taped recordings</p>	Single copy of up to 10% of a musical composition in print, sound, or multimedia form.	Same as immediately above
Broadcast programs	<p>Single copy of off-air simultaneous broadcast may be used for a period not to exceed the first 45 consecutive calendar days after recording date.</p> <p>Use by only individual teachers.</p> <p>Copyright notice required.</p>	<p>Same as immediately above.</p> <p>May not be done at direction of superior.</p> <p>May not be altered.</p>

Sample Form Letter for Permission to Use Copyrighted Material
(Use school letterhead)

Permission Department
Publishing Company
XXX Street
City, ST ZIP Code

Date: _____

Dear Sir or Madam:

I am requesting permission to duplicate the following for use in my classes next semester:

Title:

Copyright: Publishing Co., 1989, 1997

Materials to be duplicated: Essays 7, 12, and 22

Distribution: The material will be distributed to students in my class; they will not be charged for the use of the material.

Number of copies to be made: 40

Type of Reprint: Photocopy.

Use: Supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Your response by _____ (date) would be most appreciated.

Sincerely,

Faculty Member

I (We) _____ grant permission to reproduce the above materials.

Please use the following credit line:

Signature

Date

Sample Form Letter for Permission to Use NonPrint Copyrighted Material
(Use school letterhead)

Permission Department
Publishing Company
XXX Street
City, ST ZIP Code

Date: _____

Dear Sir or Madam:

The library media center has purchased a copy of the item identified on the attached purchase order. We are requesting permission to do the following:

- To make an archival copy
- To duplicate up to ___ copies of the work
- To convert the format of the item
- To show the work publicly at no admission charge. This would include use by students, faculty, or parent-teacher groups in the evening, special showing during the lunch hour, use at faculty training, and the like.
- To broadcast the item for instructional purposes within the school buildings

Please sign this letter below as an indication that you have granted the permission(s) checked above and return the letter to us in the enclosed self-addressed stamped envelope.

Sincerely,

Library Media Specialist / Faculty Member

I (We) _____ grant the permissions noted above to this library media center to facilitate the use of the materials identified.

Signature

Date