

## **COPYRIGHT COMPLIANCE**

Employees and students are to comply with copyright law (Title 17 of the United States Code, titled "Copyrights") and related legislation. The following guidelines summarize the key provisions of Title 17 of the United States Code and other federal legislation and guidelines related to the duplication, retention, and use of copyrighted materials.

- A. Unlawful copies of copyrighted materials may not be produced on district-owned equipment.
- B. Unlawful copies of copyrighted material may not be used with district-owned equipment, within district-owned facilities, or at district-sponsored functions.
- C. Employees who make or use copies of copyrighted materials in their jobs are expected to be familiar with published provisions regarding fair use and public display, and are further expected to be able to provide, upon request, the justification under sections 107, 108 or 110 or USC 17 for materials that been used or copied. Sections 107, 108 and 110 of the Copyright Act deal with the exemptions from copyright commonly known as "fair use." Under the fair use doctrine, reproducing materials for such purposes as criticism, comment, news reporting, teaching, scholarship or research is permissible without formal authorization from the copyright holder. For duplicating or changing a work to fall within the bounds of "fair use", all four of these standards must be met:
  - 1. The purpose and character of the use. The use must be for such purposes as teaching or scholarship.
  - 2. The nature of the copyrighted work. Published factual or nonfiction materials that are important to the educational objectives are more acceptable to be copied than unpublished works or highly creative works such as art, music, novels or other fiction works, films or plays.
  - 3. The amount and substantiality of the portion used. Copying the whole of a work cannot be considered fair use; copying a small portion may be considered fair use if following the guidelines for Books and Periodicals, Printed Music, Television, and/or Multimedia as outlined herein.
  - 4. The effect of the use upon the potential market or value of the copyrighted work. If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials may be an infringement, and making multiple copies presents the danger of greater penalties.

As technology changes the way creative works are published and distributed, the courts have worked to keep up with interpreting the law to establish a fair balance between the rights of creators, publishers, and consumers. The following guidelines for works in a variety of formats have been established by agreements between authors, publishers, and the general public and help to help clarify what constitutes fair use. Teachers and students should obtain permission from the copyright holder or from a clearinghouse such as *Copyright Clearance Center* for any use of copyrighted material that does not fall clearly within these fair use guidelines.

Books and periodicals:

- A. Single copying for teachers. A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
1. a chapter from a book;
  2. an article from a periodical or newspaper
  3. a short story, short essay or short poem, whether or not from a collective work;
  4. a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
- B. Multiple Copies for Classroom Use. Multiple copies (not to exceed one copy per pupil in a course) may be made by or for the person teaching the course for classroom use or discussion provided that:
1. the copying meets the tests of brevity and spontaneity as defined below:  
and
  2. the copying meets the cumulative effect test as defined below; and
  3. each copy includes a notice of copyright.

Brevity

- a. Poetry: a complete poem if less than 250 words or an excerpt of not more than 250 words if from a longer poem.
- b. Prose: a complete article, story or essay if less than 2500 words or, if longer, an excerpt of not more than 1000 words or 10% of the work, whichever is less.  
The allowable section may be expanded to permit the completion of an unfinished line of a poem or an unfinished prose paragraph.
- c. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- d. "Special" works: For shorter works, such as children's picture books, that are less than 2500 words in their entirety an excerpt of two pages and containing not more than 10% of the text may be reproduced.

#### Spontaneity

- a. The copying must be at the request of the individual teacher.
- b. The decision to use the work and the time it needs to be used for maximum teaching effectiveness are so close in time it is unreasonable to expect a timely reply to a request for permission to copy.

#### Cumulative Effect

- a. The material is copied for only one course in the school.
- b. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than 3 from the same collective work or periodical during one semester.
- c. No more than 9 instances of multiple copying for one course during one semester.

Limitations in items a. and c. do not apply to current news periodicals and newspapers.

4. Copying to create or replace or substitute for anthologies, compilations, or collective works is prohibited.
5. Copying works intended to be "consumable" in the course of study or teaching, including workbooks, exercises, standardized tests and test booklets and answer sheets is prohibited.
6. Copying shall not:
  - a. substitute for the purchase of books, publishers' reprints, or periodicals
  - b. be directed by a higher authority
  - c. be repeated for the same item by the same teacher from semester to semester.
7. The student may or not be charged more than the actual cost of the photocopying.

#### Printed Music

##### A. Permissible Uses

1. Emergency copying to replace purchased copies that are not available for an imminent performance is permissible providing replacement copies are purchased as soon as possible.
2. Copying for academic purposes other than performance is acceptable as long as the copied excerpts do not comprise a part of the whole that would constitute a performable unit such as a section, movement, or aria. In no case can more than 10% of the whole work be copied. The number of copies shall not exceed one per student.

3. Printed copies which have been purchased may be edited or simplified as long as 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 school or individual teachers.
5. A single copy of a recording of copyrighted music may be made from a recording that is owned by the school or teacher for the purpose of constructing listening exercises or examinations and may be retained by the school or teacher.

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works is prohibited.
2. Copying of or from works intended to be “consumable” such as workbooks, exercises, standardized tests and answer sheets, etc. is prohibited.
3. Copying for the purpose of performance is prohibited (except as in A.1. above).
4. Copying to avoid purchasing the music is prohibited (except in A.1. and A.2. above).
5. Copying without including the copyright notice that appears on the printed copy is prohibited.

Television

A. Recording from broadcast networks (e.g. ABC, NBC, CBS, PBS)

Unless otherwise specified by the individual network, the following limitations apply:

1. The recording may be retained for no more than 45 consecutive calendar days after the date it was recorded.
2. The recorded program must be used in face to face teaching within the first consecutive 10 school days following the date it was recorded.
3. Programs may only be recorded at the request of, and used by, individual teachers. No broadcast program may be recorded more than once at the request of the same teacher, regardless of the number of times the program is broadcast.
4. A limited number of copies may be reproduced to meet the legitimate needs of teachers under these guidelines. Each additional copy is subject to the provisions regarding the original recording.
5. After the first 10 consecutive school days, the recordings may be used up to the end of the 45 calendar day retention period only for teacher evaluation purposes, i.e., to determine if the program should be purchased for use in the regular teaching curriculum.

6. 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 combined or merged to create teaching anthologies or compilations.
  7. All copies of off-air recordings must include the copyright notice on the broadcast program.
- B. Recording from cable networks  
Cable networks often allow recordings to be kept for a longer period of time. Consult the *Cable in the Classroom* website for the retention period for programs recorded from cable networks.
- C. Commercial video recordings  
Commercial video recordings sold or distributed for home use must be used for instructional purposes to qualify for the “fair use” exemption. For use to be considered instructional, video recordings
1. must be presented by teachers or students and
  2. must be part of face-to-face teaching and an integral part of the unit being taught and
  3. must be shown in a classroom, library, or similar place of instruction in a nonprofit educational institution.

Any other display of a copyrighted video recording in a “place open to the public or at any place where a substantial number of persons outside of a normal circle of a family or its social acquaintances is gathered” is considered a public performance and requires public performance rights. Public performance rights may be purchased through sources such as *Moving Licensing USA*.

## Multimedia

Portions of lawfully acquired copyrighted works (obtained through lawful means such as purchase of, gift or license) may be incorporated into educational multimedia projects for curriculum-based instruction and student projects for a specific course, subject to certain restrictions.

- A. Permitted Uses  
Educators may perform and display their educational multimedia projects, in the course for which they were created, in curriculum-based instruction to students:
1. for face-to-face instruction;
  2. for students’ directed self-study; and
  3. so long as the technology limits access and prevents the making of copies of copyrighted material, over the educational institution’s secure electronic network for instruction to students at remote sites enrolled in curriculum-based courses (in real time or for after class review or directed self-study).

Students must be advised that they may not copy the educational multimedia project.

Teachers may perform or display the projects in presentations to peers at workshops and conferences. Students may perform or display their educational multimedia projects for educational uses in the course for which they were created, and may use them in their portfolios as examples of their academic work.

**B. Time Limits**

Teachers may use their educational multimedia projects for teaching courses, for a period of up to two years after the first instructional use with a class. Therefore, permission is required for each copyrighted portion incorporated in the project. Student's use of his or her own project is limited to the course for which it was created and to later portfolio use.

**C. Portion Limits**

These limits, "in the aggregate" (i.e., on the amount that may be copied from a single copyrighted work), apply cumulatively to each educator's or student's multimedia project for the same academic semester, cycle or term.

1. Motion media: Up to 10% or 3 minutes, whichever is less, in the aggregate.
2. Text: Up to 10% or 1000 word, whichever is less, in the aggregate. An entire poem of less than 250 words may be used, but not 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.
3. Music, lyrics, and music video: Up to 10%, 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 music is embodied in copies, or audio or audiovisual works. Any alterations to a music work shall not change the basic melody or fundamental character of the work.
4. Photographs and illustrations: An entire work may be used but no more than five images by an artist or photographer, and no more than 10% or 15 images, whichever is less, from a published collective work.
5. Copyrighted database or data table: Up to 10% or 2500 field entries (items of information in a record of a database, such as name or social security number) or cell entries (intersections where a row and column meet on a spreadsheet), whichever is less.

D. Limits on Copying and Distribution

For educator and student uses, only two “use copies” may be made, only one of which may be placed on reserve (see paragraph A. above). An additional copy may be made for preservation purposes, but may be used or copied only to replace a lost, stolen or damaged use copy. Each principal creator of a jointly created project may retain one copy, for the uses permitted educators and students. Further use requires permission for all copyrighted works incorporated in the project. Educators and students who anticipate their work may be more broadly disseminated are advised to seek permissions during the development process.

E. Notices of Attribution, Acknowledgement and Use Restrictions

Teachers and students should credit sources (identify the work’s source, including where available the author, title, publisher, and date and place of publication) display copyright information (copyright notice, year of first publication, and name of copyright holder) if shown in the original source, for all works incorporated into an educational multimedia project. Such information may be combined and shown in a separate section of the project, except that for images incorporated into the project for permissible remote instruction, credit and copyright information must be attached to the image file and appear on the screen when the image is viewed. If displaying credit and copyright information would conflict with instructional objectives (e.g., would provide answers to examination questions), the information may be linked to the image in a manner compatible with the instructional objectives. Alterations to incorporated portions of copyrighted works may be made only to support specific instructional objectives, and teachers and students are advised to note if any such alterations have been made. Teachers and students must include on the opening screen of their multimedia project and on any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines, and are restricted from further use.

Online Video Sharing

The Center for Social Media at the American University School of Communication published the Code of Best Practices in Fair Use for Online Video guidelines in May 2009. These Best Practices are intended to help creators, online providers, copyright holders, and others interested in the making, sharing, and posting of online video interpret the copyright doctrine of fair use.

The Rapid City Area School District recommends that teachers and students posting and sharing video online observe the six uses of licensed video that the Center for Social Media believes fall under fair use.

- A. Commenting on or critiquing copyrighted material  
As long as the use is not so extensive that it ceases to function as critique but instead becomes a substitute for the work itself, segments of copyrighted material can be “quoted” in new video recordings.
- B. Using copyrighted material for illustration or example  
For instance, clips from Hollywood films might be used to demonstrate changing American attitudes toward race or a news clip of a politician speaking may reinforce an assertion.
- C. Capturing copyrighted material incidentally or accidentally  
For instance, when recording a video, songs playing on the radio or television shows playing in the background may inadvertently be recorded. The video maker should be sure that the use is not so extensive that it becomes the primary focus of interest and that, where possible, the material is properly attributed.
- D. Reproducing, reposting, or quoting in order to memorialize, preserve, or rescue an experience, an event, or a cultural phenomenon  
For instance, someone may record their favorite performance or document their own presence at a rock concert. Someone may post a controversial or notorious moment from broadcast television or a public event. Fair use reaches its limit when the content is reproduced in amounts that are disproportionate for purposes of documentation, or in the case of archiving, when the material is readily available from authorized sources.
- E. Copying, reporting, and recirculating a work or part of a work for purposes of launching a discussion  
The purpose of copying and posting the video needs to be clear so that the viewer knows that the intent of the poster is to spur discussion.
- F. Quoting in order to recombine elements to make a new work whose meaning comes from the relationships between the elements  
Mashups (combining different materials to compose a new work), remixes (re-editing an existing work), and music videos all use this technique of recombining existing material. This kind of activity is covered by fair use to the extent that the reuse of copyrighted works creates new meaning by juxtaposition. Fair use will not apply when a copyrighted song is used in its entirety for a newly created video simply because the music evokes the desired mood.

### Licenses and Contracts

Teachers and students should determine whether specific works or data used are subject to licenses or contracts, which are not superseded by fair use principles.

- A. Liability for willful infringement rests with the person initiating the duplication of copyrighted materials.
- B. Employees who use copyrighted materials that do not fall within fair use or public display guidelines will be able to substantiate that the materials meet one of the following tests:
  - 1. The materials have been purchased from an authorized vendor by the individual or district and a record of the purchase exists.
  - 2. The materials are copies covered by a licensing agreement between the copyright owner and the district or the individual employee.
  - 3. The materials are being previewed or demonstrated by the user to reach a decision about future purchase or licensing and a valid agreement exists that allows for such use.

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Legal Reference:  
USC Title 17 – Copyrights