

Regulation 6162.6: Use Of Copyrighted Materials

Status: DRAFT

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Prior to reproducing, distributing, displaying, posting, performing, or otherwise using a copyrighted material for an instructional purpose or in the course of other district business, district staff shall determine whether it is necessary to request permission of the copyright holder. Unless the staff member is reasonably certain that the material is in the public domain or the intended use meets the criteria for an exception specified in 17 USC 107-122 and this administrative regulation, he/she shall either obtain permission from the copyright holder or avoid use of the material. In addition, permission of the copyright holder shall be requested whenever district staff intend to publicly disseminate a copyrighted work, such as by posting on the district or school web site or using another method of communications accessible to the public.

Each employee making a reproduction shall first determine whether the copying is permitted by law based on the guidelines below. If the copying is not permitted according to these guidelines, the principal/designee may request permission to reproduce the material from its copyright holders.

Any reproduction or other use of a copyrighted work shall include the copyright notice.

District staff shall not reproduce and distribute copyrighted works of any type in any of the following circumstances:

1. When the copyrighted work is a "consumable" work such as a workbook, standardized test, answer sheet, or similar material
2. To substitute for the purchase of the work
3. To create, replace, or substitute for anthologies or collective works

Request for Permission to Use Copyrighted Material

Requests for permission to use copyrighted materials As necessary, district staff desiring to use a copyrighted material shall identify and contact the copyright holder to request permission to use the material. The request shall include the following information:

1. Title, author(s), editor(s) or publisher, producer(s) or distributor;
2. Edition, copyright and/or production year;
3. Exact amount of material to be used, such as the number of lines, pages, or chapters or percentage of the work (i.e., lines, pages, running time, etc.);
4. Nature of the use, such as the course in which it will be used, the grade level of the students, the number of students, and the frequency of use (i.e., how many times, when and with whom the material will be used);
5. Number of copies to be made; How the material will be reproduced and distributed;
6. If an initial contact was made by phone, the request shall also include the name of the initial contact person.

If the copyright holder requires a fee to grant permission, district staff shall seek approval from the Superintendent or designee prior to incurring the cost. The following guidelines differentiate between permitted and prohibited uses of printed material, sheet and recorded music, videotapes, films, filmstrips or slide programs, off-air taping (radio or television), and computer software.

Criteria for Fair Use

In considering whether a copyrighted work may be used without the copyright holder's permission on the grounds that the intended use is "fair use" pursuant to 17 USC 107, including reproduction in copies, phonorecords, or any other reproductive form for purposes such as criticism, comment, news reporting, teaching (including multiple copies

for classroom use), scholarship, or research, district staff shall consider all the following factors: (17 USC 107)

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

Any determination of fair use shall weight together all the factors specified in items #1-4 above in addition to any applicable guidelines presented in this administrative regulation for specific types of copyrighted works.

Guidelines for Copying Text

Staff may reproduce text from a copyrighted work from a printed resource, the Internet, or other source, without permission from the copyright holder, under the following conditions:

1. A single copy of a chapter of a book, article from a periodical or newspaper, short story, short essay, short poem, chart, graph, diagram, drawing, cartoon, or picture may be made by or for a teacher for his/her scholarly research or use in teaching or preparation to teach a class.
2. Multiple copies, not to exceed one copy per student in a course, may be made by or for a teacher for classroom use or discussion, provided that:
 - a. The amount to be copied does not exceed:
 - i. 250 words for a complete poem or excerpt from a poem
 - ii. 2,500 words for a complete article, story, or essay
 - iii. 1,000 words or 10 percent of the whole (with a minimum of 500 words), whichever is less, for an excerpt from a larger prose work
 - iv. One illustration (e.g., chart, graph, diagram, cartoon, or picture) per book or periodical issue
 - b. The copying is for only one course in the school.
 - c. With the exception of newspapers and other news periodicals, not more than one work is copied from the same author per term, not more than three works are copied from the same collective work or periodical volume per term, and there are no more than nine instances of multiple copying per course per term.
 - d. A delay to request permission from the copyright holder would preclude the most effective instructional use of the material.

Printed Materials

Permitted Uses:

1. Single copies at the request of an individual teacher:
 - a. A chapter of a book.

- b. An article from a magazine or newspaper.
 - c. A short story, short essay or short poem, whether or not from a collective work.
 - d. A chart, graph, diagram, drawing, cartoon or a picture from a book, magazine or newspaper.
2. Multiple copies at the request of an individual teacher for classroom use, not to exceed one copy per student in a course:
- a. A complete poem if less than 250 words and if printed on not more than two pages.
 - b. An excerpt from a longer poem, not to exceed 250 words.
 - c. A complete article, story or essay of less than 2,500 words.
 - d. An excerpt from a larger prose work not to exceed 10 percent of the whole or 1,000 words, whichever is less, but in any event a minimum of 500 words.
 - e. One chart, graph, diagram, cartoon or picture per book or magazine issue.

All preceding copies must bear the copyright notice. They may be made only at the discretion of the individual teacher on occasions when a delay to request permission would preclude their most effective instructional use.

Prohibited Uses:

1. Copying more than one work or two excerpts from a single author during one class term.
2. Copying more than three works from a collective work or periodical volume during one class term.
3. Copying materials for more than one course in the school where the copies are made.
4. More than nine sets of multiple copies for distribution to students in one class term.
5. Copying used to create, replace or substitute for anthologies or collective works.
6. Copying of "consumable" works such as workbooks, standardized tests, answer sheets, etc.
7. Copying that substitutes for the purchase of books, publishers' reprints or periodicals.
8. Repeated copying of the same item by the same teacher from term to term.

The above prohibitions do not apply to current news magazines and newspapers.

Guidelines for Reproducing Sheet and Recorded Music

District staff may reproduce sheet music and recorded music without permission from the copyright holder under the following conditions:

Permitted Uses:

1. Emergency copies may be made when purchased copies needed for an imminent performance are not available permitted, provided that they are replacing replacement copies shall be purchased in due course. copies and replacement is planned.
2. Single or multiple copies (one per student) of excerpts of works may be made for academic purposes other than performances, providing that the excerpt does not constitute an entire performable unit (e.g., a section, movement, or aria), or no more than 10% percent of the total work is used, and the number of copies does not exceed one per student may be made for academic purposes other than performances.
3. Printed copies that have been purchased sheet music may be edited or simplified provided the character of the work is not distorted and lyrics are not added or altered.
4. A single copy of a recorded performance by students may be made retained by the district or individual teacher

for evaluation or rehearsal purposes.

5. A single copy of recordings of copyrighted music owned by the district or individual teacher may be made and retained for the purpose of constructing exercises or examinations.
6. A single copy of an excerpt that constitutes an entire performable unit (i.e., a movement or aria) may be made, provided it is either:
 - a. Confirmed by the copyright proprietor to be out of print, or
 - b. Unavailable except in a larger work. This may be done by or for a teacher only for scholarly research or in preparation for teaching a class.
7. A single copy of a portion of a sound recording may be made by or for a student, i.e., a song from a record, but not the entire recording. The copy may be used in the educational context in which it was made and may not be sold or performed for profit.

Prohibited Uses:

1. Copying to replace or substitute for anthologies or collections.
2. Copying from works intended to be "consumable."
3. Copying for purposes of performance except as noted in an emergency.
4. Copying to substitute for purchase of music.
5. Copying without inclusion of copyright notice on the copy.
6. Duplication of tapes, unless reproduction rights were given at time of purchase.
7. Reproduction of musical works or conversion to another format, e.g. record to tape.

Guidelines for Performing or Displaying Copyrighted Works

In the course of face-to-face instruction in a classroom or similar place devoted to instruction, teachers or students may recite, render, play, dance, act, or show a copyrighted work either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, show its images in any sequence or to make the sounds accompanying it audible, provided that: (17 USC 101, 110)

1. The performance or display is given by means of a lawfully obtained copy of the work.
2. The performance or display is made by, at the direction of, or under the actual supervision of a teacher as an integral part of a class session.
3. The performance or display is directly related and of material assistance to the teaching content of the transmission.
4. The transmission is limited to students enrolled in the course or to Governing Board members or employees as part of their official duties or employment.
5. If the work is to be digitally transmitted, the district has applied technological protections that reasonably prevent retention of the work in accessible form for longer than the class session and the unauthorized further dissemination of the work.

Any use of a motion picture or other audiovisual work outside the curriculum, such as for entertainment, a school or class reward, or a fundraiser, shall require permission from the copyright holder or a special viewing license.

Guidelines for Recording Broadcast Programming

Teachers may make recordings of television programs for use in a classroom for educational purposes under the following conditions:

1. Only programs provided to the public free of charge may be recorded and shown. Any use of programming from paid television services shall require permission of the copyright holder.
2. The recording may be shown only during the first 10 consecutive school days after it is made. It may be used once by an individual teacher in the course of relevant teaching activities and may be repeated once only when instructional reinforcement is necessary.
3. A limited number of copies may be reproduced from each recording to meet the legitimate needs of the teacher. Each copy shall be subject to all the provisions governing the original recording.
4. The recording may be retained for 45 calendar days after it is made and then shall be erased or destroyed. However, after the first 10 consecutive school days, the recording may only be used for purposes of determining whether to include the broadcast program in the teaching curriculum. If the teacher decides to keep the program for use in the curriculum, the teacher shall request permission from the copyright owner.
5. Off-air recordings need not be used in their entirety, but the content of recorded programs may not be altered.

Videotapes, Films, Filmstrips or Slide Programs

Permitted Uses:

1. A single copy of a portion of a copyrighted film or filmstrip may be made by a student for educational purposes if the material is owned by the school which the student attends.
2. A single copy of a small portion of a film or filmstrip may be made by or for a teacher for scholarly or teaching purposes.
3. Selected slides may be reproduced from a series if reproduction does not exceed 10% of the total or excerpt the essence of the work.
4. A slide or overhead transparency series may be created from multiple sources as long as creation does not exceed 10% of photographs in one source (book, magazine, filmstrip, etc.). This may not be done when the source forbids photographic reproduction.
5. A single overhead transparency may be created from a single page of a "consumable" workbook.
6. Sections of a film may be excerpted for a local videotape (not to be shown over cable) if they do not exceed 10% of the total or excerpt the essence of the work. Extreme care must be exercised in copying a small portion of a film or filmstrip; small portions may contain the very essence of the material in question.

Prohibited Uses:

1. Reproduction of an audiovisual work in its entirety.
2. Conversion from one media format to another, e.g., film to videotape, unless permission is secured.
3. No one is permitted to copy any portion of a film or filmstrip sent to the school for preview or rented or owned by another school or institution without the express written permission of the copyright holder. The copyright of a film governs its performance (showing) as well as the copying of it. It is permissible to show a film to students using closed-circuit television if the system is confined to one building. Showing a film via closed-circuit television outside the building is not permitted.

Radio -- Off-Air Taping

Permitted Uses:

1. A single copy of a small portion of a copyrighted radio program may be made by a student for educational

purposes. Such a copy may not be sold or performed for profit.

2. Copies of broadcasts by national public radio may be made by district employees and retained for an indefinite period for educational purposes.

Prohibited Uses:

Copying broadcasts on commercial radio, except for copyrighted musical selections (see Sheet and Recorded Music), is governed by the same copyright laws that apply to off-air taping of commercial television; however, there is no special provision allowing libraries to tape radio news programs.

Television – Off-Air Taping

Permitted Uses:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained for a period not to exceed 45 days. All off-air recordings shall be erased or destroyed at the end of the retention period. Broadcast programs are television programs transmitted for reception by the general public without charge.
2. 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. These recordings may be shown 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.
3. Off-air recordings may be made only at the request of individual teachers, for use by those teachers. 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.
4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
5. 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; they may not be used for student exhibition or any other nonevaluation purpose without authorization.
6. All copies of off-air recordings shall include the copyright notice on the broadcast programs as recorded.

Prohibited Uses:

1. Off-air recording in anticipation of teacher requests.
2. Using the recording for instruction after the 10-day use period.
3. Holding the recording for weeks or indefinitely because:
 - a. Units needing the program concepts are not taught within the 10-day use period.
 - b. An interruption or technical problems delayed its use.
 - c. Another teacher wishes to use it, or for any other supposedly "legitimate" educational reason.
4. On occasion a special notice is provided with some materials specifically prohibiting reproduction of any kind. Permission to use any part of such works must be secured in writing from the author or producer in accordance with this regulation.
5. Off-air recordings need not be used in their entirety, but the content of recorded programs may not be altered. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

Guidelines for Copying Computer Programs or Software Copyright

District staff shall observe all licensing agreements between vendors and the district, including monitoring the number of users permitted by an agreement. Unless the applicable licensing agreement authorizes multiple users of a single computer program or software, the district shall not make multiple copies.

Permitted Uses:

Copies of district-owned software may be made under either of the following conditions only when: (17 USC 117)

1. The copy is needed as an essential step in using the computer program with a particular machine. This copy is to be used in no other way.
2. The copy is used for archival or "backup" purposes. This copy may be held only as a file copy and must be destroyed in the event that continued possession of the program ceases to be rightful, when the program is no longer rightfully owned by the district unless the copyright owner authorizes its sale, lease or transfer as part of the sale, lease or transfer of the original program. (17 USC 117)

Prohibited Uses:

1. Copies of copyrighted programs may not be made for any purpose other than the two permitted above.
2. When permission is obtained from the copyright holder to use software on a disk-sharing system, efforts will be made to secure software from copying.
3. Illegal copies of copyrighted programs shall not be made or used on school equipment.

Reproduction of Works for Libraries

The copyright law imposes extensive restrictions on the reproduction of works for school libraries. Systematic duplication of multiple copies is forbidden by law, with the exceptions noted below:

Permitted Uses - A librarian may:

1. Arrange for interlibrary loans of photocopies of works requested by users, provided that copying is not done to substitute for subscriptions to or purchase of a work.
2. Within any calendar year, make for a requesting entity five copies of any article or articles published in a given periodical within the last five years prior to the date of the request for the material.
3. Make single copies of articles or phonorecords or excerpts of longer works for a student making a request, provided the material becomes the property of the student for private study, scholarship, or research.
4. Make a copy of an unpublished work for purposes of preservation, of a published work to replace a damaged copy, and of an out-of-print work that cannot be obtained at a fair price.
5. Make off-the-air tape recordings of daily television news broadcasts for limited distribution to researchers and scholars for research purposes.
6. Selectively make a copy for purposes of preservation or security, in accordance with the provisions of fair use, of a musical work, pictorial, graphic, sculptural work, motion picture, or other audiovisual work if the current copy owned by the library is damaged, deteriorated, lost, or stolen; and it has been determined that an unused copy cannot be obtained at a fair price.

Prohibited Uses - A librarian may not:

1. Make copies for students if there is reason to suspect that the students have been instructed to obtain copies individually.
2. Copy without including a notice of copyright on the reproduced material.

Additional Considerations and Clarifications in the Use of Copyrighted Materials

Educational Performances and Displays

The Copyright Act clearly permits the showing of a motion picture, videos, and so forth without an educational performance license if the following conditions are satisfied:

1. Use takes place in areas designated for classroom instruction;
2. Programs are shown as part of the instructional program, not for recreation or extracurricular use; and
3. Materials are used in face-to-face instruction. Any other use of copyrighted materials for entertainment or extracurricular purposes would require an educational performance license unless those rights were granted at the time of purchase.

Emerging Technologies

Newer technologies are easily changed or merged with one another. In all likelihood their potential for manipulation will result in the creation of new copyrightable forms of expression. These technologies include, but are not limited to, digital video, video disk, satellite transmission, distance learning, CD-ROM, on-line data bases (and their downloading), informational networks, and other educational interventions which can be manipulated into new copyrightable forms of expression.

When using the new technologies, educators need to be fully aware of the potential for copyright infringement. At the time of purchase, it is essential to specify the intended use of the media and understand the provisions of any contract a distributor may include with the media purchased. Educational applications may be enhanced if these purchase procedures are followed.

In the absence of clearly granted rights, it is recommended that educators contact the copyright holder in writing for permission to manipulate or use these technologies in alternative ways. This course of action will ensure compliance with the spirit and intent of the copyright law as it applies to the role of electronic information and its transfer and use.

Notice

Warning Concerning Copyright Restrictions. The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or other reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the Governing Board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

Ed. Code 35182

Description

[Marketing or licensing noneducational mainframe electronic data-processing software](#)

Federal

17 USC 101-122

Description

[Subject matter and scope of copyright](#)

17 USC 102

[Definitions](#)

17 USC 106

[Copyright protection](#)

17 USC 107

[Fair use of copyrighted works](#)

17 USC 110

[Limitations on exclusive rights: Exemption of certain performances and displays](#)

17 USC 504

[Penalties for copyright infringement](#)

Management Resources

Description

Management Resources

Court Decision	Cambridge University Press et al. v. Becker et al. (N.D. Ga. 2012) 863 F.Supp.2d 1190
Court Decision	Campbell v. Acuff-Rose Music, Inc. (1994) 510 U.S. 569
Court Decision	Marcus v. Rowley (9th Cir., 1982) 695 F.2d 1171
National School Boards Association Publication	Copyright Law: Do Schools Need a License to Show a Movie?, School Law Review, July 2010
U.S. Copyright Office Publication	Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, rev. 2009
U.S. Copyright Office Publication	Circular 22: How to Investigate the Copyright Status of a Work, rev. 2013
U.S. Copyright Office Publication	Circular 23: The Copyright Card Catalog and the Online Files of the Copyright Office, rev. 2012
Website	CSBA District and County Office of Education Legal Services
Website	University of California, Copyright Education
Website	U.S. Copyright Office
Website	Copyright Society of the USA
Website	National School Boards Association

Description**Cross References**

1113	District And School Websites
1113	District And School Websites
1114	District-Sponsored Social Media
1114	District-Sponsored Social Media
3312	Contracts
3530	Risk Management/Insurance
3530	Risk Management/Insurance
4040	Employee Use Of Technology
4040	Employee Use Of Technology
4119.21	Professional Standards
4119.21-E PDF(1)	Professional Standards - Code Of Ethics
4131	Staff Development
4131	Staff Development
4132	Publication Or Creation Of Materials
4219.21	Professional Standards
4219.21-E PDF(1)	Professional Standards - Code Of Ethics
4231	Staff Development
4231	Staff Development
4232	Publication Or Creation Of Materials
4319.21	Professional Standards
4319.21-E PDF(1)	Professional Standards - Code Of Ethics
4331	Staff Development
4332	Publication Or Creation Of Materials
5131.9	Academic Honesty

Description

Cross References

6141
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6142.6
6161.1
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6161.1-E PDF(1)
6161.11
6163.1
6163.4
6163.4

Description

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[Curriculum Development And Evaluation](#)
[Visual And Performing Arts Education](#)
[Selection And Evaluation Of Instructional Materials](#)
[Selection And Evaluation Of Instructional Materials](#)
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[Supplementary Instructional Materials](#)
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