

Best Practices Guide to Copyright Law for Educators

I. THRESHOLD COPYRIGHT ISSUES

A. Special Significance to Schools, Colleges, and Universities

1. Students and faculty members often encounter copyright issues when dealing with their own copyrighted works, and when utilizing the copyrighted works of others as part of research, instruction, and scholarship activities.
2. Copyright law upholds the fundamental mission of schools, colleges, and universities by providing motivation for the creation of new works through the granting of ownership rights to copyright owners, and by placing limitations on those rights to facilitate access to and use of creative works by members of the public. See John Vaughn, Duane Webster, Mary Case, Peter Givler, & Allan Adler, *Campus Copyright Rights and Responsibilities: A Basic Guide to Policy Considerations* (2005).

B. Scope of Copyright Protection

1. Copyright protects the author of an original work of a literary, dramatic, musical, or artistic nature (including plays, musicals, choreography, pictures, sculptures, motion pictures, sound recordings, and architectural works).
2. A copyright is the legal right to exercise control over the making of copies of a work and the distribution of those copies. It is also the right to control the distribution of such copies and to limit the creation of ‘derivative works,’ which are works based on the original work. It is also the right to perform the work or to display the work publicly. 17 U.S.C. § 106.
3. The Copyright Act of 1976, effective January 1, 1978, replaced the prior copyright act. Under the old law, registration and notices (the copyright symbol, the author’s name, and date) were required to maintain a copyright. Under the new Act, copyright is automatic. A work is copyrighted as soon as it becomes tangible. It is advisable to designate in writing the copyright on the face of the work.

C. “Fair Use” Doctrine

1. “Fair use” is a privilege, asserted by someone other than the copyright holder, to use the copyrighted material in a reasonable manner without the copyright holder’s consent. *Belmore v. City Pages, Inc.*, 880 F. Supp. 673 (D. Minn. 1995).
2. The “fair use” of copyrighted work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. 17 U.S.C. § 107.

3. The provision sets out four nonexclusive factors that a court must weigh in making a determination about whether any particular use is fair:
 - a. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - b. the nature of the copyrighted work;
 - c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - d. the effect of the use upon the potential market for or value of the copyrighted work.
Id.

II. GUIDELINES FOR USE OF COPYRIGHTED MATERIAL

In light of the above referenced laws and various guidelines developed through private agreements between the representatives of the publishing industry and the education community, educators may use various forms of copyrighted material in the classrooms, as follows:

A. Printed Material

1. Single Copies of Printed Material – 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:
 - a. a chapter from a book;
 - b. an article from a periodical 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 picture from a book, periodical, or newspaper;
2. Multiple Copies of Printed Material –
 - a. Educators may make multiple copies of the following for classroom use or discussion:
 - (i) a complete poem;
 - (ii) articles, stories, or essays less than 2,500 words;
 - (iii) excerpt from a longer work (10 percent of work or 1,000 words, whichever is less);
 - (iv) one chart, picture, diagram, or cartoon per book or per periodical issue;
 - (v) two pages from an illustrated work, e.g., a children’s book; and

- b. Each copy must include a notice of copyright, i.e., the notice of the company or individual which produced the work, usually on the front cover of the work.
 - c. The copying is at the direction of the individual teacher.
 - d. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness should be close in time so that it would be unreasonable to expect a timely reply to a request for permission.
 - e. Only one copy allowed per pupil.
3. Limitations Applicable to Both the Making of Single and Multiple Copies –
- a. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works.
 - b. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.
 - c. Copying may not –
 - (i) substitute for the purchase of books, publishers’ reprints, or periodicals;
 - (ii) be directed by authorities unconnected with the school;
 - (iii) be repeated with respect to the same item by the same teacher from term to term, but is permissible for educational purposes from one school year to the next.
 - d. No charge shall be made to the student beyond the actual cost of the photocopying.

B. Music

- 1. An educator may make copies of music as follows –
 - a. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
 - b. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit. The number of copies shall not exceed one copy per pupil.
 - c. 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.

- d. 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 altered.
 - e. 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, student, or individual teacher.
 - f. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examination, 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.)
 - g. Educators may also use copyrighted music in classes and school performances for educational purposes, so long as the use does not have a profit-making intent or effect.
2. Educators are prohibited from doing the following –
- a. copying to create, replace, or substitute for anthologies, compilations or collective works.
 - b. copying of or from works intended to be “consumable” in the course of study or of teaching, such as workbooks, exercises, standardized tests, answer sheets, and like material.
 - c. copying for the purpose of performance, except as in B(1)(a) above.
 - d. copying for the purpose of substituting for the purchase of music, except as in B(1)(a) and B(1)(b) above.
 - e. copying without inclusion of the copyright notice which appears on the printed copy.

C. Videos and Movies

- 1. Videos and movies may be viewed in the classroom if –
 - a. the video or movie is part of the face-to-face teaching activities;
 - b. the video or movie is viewed in a classroom or other place of instruction;
 - c. the video or movie is a lawfully made copy; and
 - d. the video or movie is a regular part of the instruction and is directly related to the teaching content.
- 2. Viewing of videos for entertainment purposes –
 - a. Schools can legally show copyrighted entertainment movies for non-teaching activities if they obtain a public performance site license.

- b. Movie Licensing USA is the licensing agent for most of the major motion picture studios. It provides licensing to schools and public libraries so that entertainment movies may be used legally.
 - c. There are two types of licenses available:
 - (i) Annual Movie Public Performance Copyright Compliance Site License (allows a school to use movies legally throughout the year for many non-teaching activities such as after-school programs, student rewards, holiday programs, etc.). This annual site license allows an unlimited number of legal exhibitions of all the entertainment movies currently being sold for “home use” through stores or catalogs. Price is based on your school’s enrollment.
 - (ii) One-time, single Movie Public Performance Copyright Compliance Site License (allows a school to hold a one-time movie event).
 - d. Once a school is licensed, videos or movies can be obtained from a legal source, such as a video rental store, a public library, or a video owned by a teacher or a student’s parents.
 - e. These licenses do not permit entertainment movies to be used when an admission fee is charged, other than to cover costs. In lieu of charging an admission, you may “suggest donations” and/or provide concessions for a price.
3. Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:
- a. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retained by the School for a period not to exceed the first 45 consecutive calendar days after date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed.
 - b. 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 during the first ten consecutive school days within the 45-calendar day retention period. “School days” are actual days of instruction, excluding examination periods.
 - c. Off-air recordings shall be made at the request of and used by individual teachers, and shall not be regularly recorded in anticipation of requests. No broadcast program shall be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program is broadcast.
 - d. 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. All copies of off-air recordings shall include the copyright notice on the broadcast program as recorded.

- e. After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar day retention period only to determine whether to include the broadcast program in the teaching curriculum, and shall not be used in the District for student exhibition or any other non-evaluative purpose without authorization.
- f. Off-air recordings need not be used in their entirety, but the recorded programs shall not be altered from their original content. Off-air recordings shall not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

D. Multimedia Projects and Presentations

1. Students –

- a. Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.
- b. Students may perform and display their own educational multimedia projects created 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.

2. Educators for Curriculum-Based Instruction –

- a. 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 at educational institutions.
- b. Educators may perform and display their own educational multimedia projects for curriculum-based instruction to students in the following situations:
 - (i) for face-to-face instruction,
 - (ii) assigned to students for directed self-study,
 - (iii) for 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 educational multimedia project (such as a password or PIN), and provided further that the technology prevents the making of copies of copyrighted material.

3. Educator Use for Peer Conferences –

- a. 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.

4. Educator Use for Professional Portfolio –
 - a. Educators may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses, such as tenure review or job interviews.

E. Internet

1. Single or multiple copies of internet images may be printed for student projects and teacher lessons. In making any such copies, educators should follow the guidelines for using printed material.

F. Software

1. Educators or schools may make a backup copy of a computer program for archival purposes in the event the original copy is destroyed or damaged. This copy is not to be used on a second machine at the same time as the original. You may adapt a program to meet your needs, but you cannot copy, give away, or sell an adaptation of a program and you cannot make multiple copies of adaptations for instructional use.
2. Unless the software has a license that explicitly permits you to do so, you should avoid loading multiple computers with programs from one disk for use at the same time. The legal concept is “proliferation of simultaneous users,” and is designed to protect the copyright holder from loss of sales.

III. CONCLUSION

- A. “Fair use” is a concept which should be a guidepost for educators.
- B. Use of printed materials, videos, music, etc. for educational purposes generally will be considered permissible “fair use” of these materials.
- C. Educators shall not –
 1. engage in profit-making activities using copyrighted material;
 2. commit piracy of any copyrighted material; and/or
 3. alter or manipulate such materials.
- D. Schools may use videos, movies, music and other multimedia materials during –
 1. classroom instruction;
 2. school not-for-profit “movie nights,” so long as a public performance site license has been acquired;
 3. student/faculty performances; and
 4. other related school activities which are related to the educational mission of the school.