

Copyright Law Summary

Educators have unique opportunities to model ethical behavior and integrity as they carry out their assignments with students. One such occasion occurs frequently with issues surrounding the copyright law. Creation of new curriculum materials, more efficient means of sharing ideas including the Internet, pressures to create more and more elegant performances, and production of multimedia presentations are all current topics which require an understanding of the copyright law.

Legal Background

The copyright law is founded in the Constitution, Article 1 Section 8, which guarantees authors, inventors, artists, etc. protection of their works "to promote the progress of science and the useful arts." As interpreted by the latest Copyright Act (Jan. 1, 1978) and related court decisions, "any tangible medium of expression, now known or later developed, which can be perceived, reproduced, record otherwise communicated..." is protected under this act. This would include all written works, videotape and laser recordings, motion pictures, art works, printed or recorded music, and computer software. Copyright owners are given exclusive control and rights to:

***NOTE:** reproduction of the work preparation of derivative works from the original distribution of copies for sale, lease, rent, or loan public performance and/or public display of their work*

Educators, researchers, reporters, scholars, and critics argue that the law is too limiting to allow them to conduct their normal roles. While educators may argue their use is for "non-profit," the courts have held that this, in and of itself, is insufficient rationale for qualifying as "Fair Use". Clearly, instructional use and commercial use are different. Inclusion of copyrighted materials within items intended to be resold would receive different interpretations by the courts than using those same materials in the instructional process. As a result, a set of guidelines (Copyright Act, Section 107) have evolved attempting to balance the interests of the copyright owners and the needs of these groups to have "Fair Use" access to various kinds of materials. This "Fair Use" access is also known as "Face-to-Face Teaching Exemption".

"Face-to-Face Teaching Exemption"

To help teachers evaluate appropriate "Fair Use" of copyrighted materials in all formats, the following five requirements should be met when using copyrighted materials

REQUIREMENTS

- The "work" is shown in the classroom or other similar place devoted to instruction. (This excludes the auditorium and the media center, unless it is for "classroom instruction")
- The "work" is shown by the teacher or a student (or guest lecturer)
- The "work" is shown as part of a regular instructional activity and the teacher is present with the students "Face-to-Face" (this excludes reward and entertainment activities)
- The "work" must be lawfully obtained copy
- The "work" is shown in a non-profit institution

"Fair Use" and the Classroom

With the “Fair Use” clause in the Copyright law, an attempt is made to balance the rights of the author with the needs of society. the following four criteria must be met in determining “Fair Use”:

- 1. The purpose and character of the use**
 - 1.1 Criticism, comment, and news reporting
 - 1.2 Teaching, scholarship, or research
- 2. The nature of the copyrighted work**
 - 2.1 Materials designed primarily for educational use (textbooks, consumable workbooks, student periodicals, et cannot be included in the “Fair Use” exemption)
 - 2.2 Factual works vs. creative, original, or fiction works (atlases, book of facts, et have much more liberal “Fair Use” opportunities)
 - 2.3 Works of “diligence” vs. works of originality (catalogs, indexes, directories, etc.)
 - 2.4 Works of an educational nature vs. those of an entertainment nature
- 3. The amount, extent or portion used in relationship to the whole copyrighted work. If the entire work was reproduced, a claim cannot be made for “Fair Use”.**
- 4. The effect of the use upon the potential market for or value of the copyrighted work**

The criteria outlined above must all be met in order for the courts to award a judgment of “Fair Use”. When they are met, a “face-to-face teaching exemption” is created and materials can be used if used appropriately.

“Fair Use” Guidelines for Books and Periodicals

- 1. Teachers may make or have made, by individual request, a single copy of any of the following for “scholarly” research, use in the teaching, or in the preparation to teach a class**
 - 1.1 a chapter from a book
 - 1.2 an article from a periodical or newspaper
 - 1.3 a short story, short essay or short poem, whether or not from a collective work
 - 1.4 a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper
- 2. Teachers may make or have made multiple copies (not to exceed in**

any event more than one copy per pupil in a course) for classroom use or discussion

- 2.1 a complete poem of less than 250 words or more than two pages
- 2.2 an excerpt from a long poem or not more than 250 words
- 2.3 a complete article, story or essay of less than 2,500 words
- 2.4 an excerpt from any prose work of not more than 1,000 words or 10% of the work (whichever is less)
- 2.5 one chart, graph, diagram, drawing, or picture per book or per periodical issue
- 2.6 children's picture books and special works which combine poetry or prose and illustrations and fall short of 500 words may not be reproduced in their entirety (An excerpt containing not more than two published pages and not more than 10% of the words found within the text may be reproduced)

3. For teachers, the following are specifically prohibited

- 3.1 Copying more than one short poem, article, story, essay or two excerpts from the same author
- 3.2 Copying more than three poems, articles, or prose from the same collective work or periodical volume during one class term
- 3.3 More than nine instances of multiple copying for one course during one class term
- 3.4 Copying which creates a substitute for or replaces an anthology, compilation or collective work whether or not used separately or in combination)
- 3.5 Copying of consumable works such as workbooks, standardized tests, answer sheets and other similar works (This does not include black-line master books purchased for classroom duplication)
- 3.6 Copying as a substitute for purchasing books, publisher's reprints or periodicals.
- 3.7 Repeated copying with respect to the same copyrighted item by the same teacher from term to term
- 3.8 Charging students for copies beyond the cost of copying
- 3.9 Syndicated, copyrighted cartoons may not be copied

“Fair Use” Guidelines for Music

1. Printed Music

- 1.1 Teachers may make emergency copies to replace purchased copies which for any reason are not available for an imminent performance provided purchased copies are obtained in due course
- 1.2 Teachers may make multiple copies of excerpts (in no case more than 10% of the whole work) for academic, non-performance purposes provided such excerpts do not comprise a part of the whole which would constitute a performable unit (section, movement, aria) (the number of copies shall not exceed one per pupil)
- 1.3 Teachers may edit or simplify printed copies which have been purchased if the fundamental character of the work is not distorted (lyrics may not be altered nor added if none exist)
- 1.4 All copies made must include the copyright notice on the printed copies

2. Recorded Music

- 2.1 Teachers may make a single copy of recordings of performances by students for evaluation or rehearsal purposes (this copy may be retained by the school or teacher)
- 2.2 Teachers may make a single copy of a sound recording of copyrighted music (tape, CD or cassette) for the purpose of constructing oral exercises or examinations if the sound recording is owned by the school or individual teacher (this permission is for the music only and does not include any copyright held by the performing artist(s))

3. To include music in a performance

- 3.1 to legally include pre recorded or printed copyrighted music within teacher or student performances which will be presented to others, both the Harry Fox Agency (NYC) and ASCAP and BMI should be contacted for copyright releases of the mechanical recording and the final performance licenses respectively.

“Fair Use” Guidelines for Computer Software

1. Teachers may

- 1.1 Make a copy of a computer program for archival purposes
- 1.2 Load a software program onto a network if a network license is obtained for

the number of machines used

1.3 Load a software program onto two computers IF there is no possibility both computers will be operated simultaneously

1.4 Use clipart from purchased collections within other documents, if the product is not for resale

2. Teachers are prohibited from

2.1 Making a secondary clipart collection

2.2 Putting a single license software program on multiple computers

3. Presents a “leasing” of the software. Teachers should be in the habit of reading all of the small type that comes on the outside of the computer programs before opening the software package

“Fair Use” Guidelines for Multimedia

1. Students may

1.1 Use portions of lawfully acquired copyrighted works in their academic multimedia projects, with proper attribution and citations

1.2 These presentations may be retained in personal portfolios as examples of the academic work for later appropriate uses such as job and school applications

2. Teachers may

1.1 Use portions of lawfully acquired copyrighted works in the course of “Face-to-Face” instruction or to demonstrate to students how to create multimedia projects

2.2 Perform or display their own multimedia works that use portions of copyrighted works at workshops of their peers or at conferences where educators are presenting work they created for curriculum-based instructional activities and they use lawfully acquired copyrighted materials

2.3 Use portions of lawfully acquired copyrighted works in producing their own multimedia education programs to be used for curriculum based instructional activities over an educational institution’s electronic network, provided there are technological limitations on access to the network and on the total number of students enrolled

3. Limitations

- 3.1 Up to 10% of a copyrighted motion media work may be reproduced
- 3.2 Up to 10% of a copyrighted musical composition may be reproduced
- 3.3 Up to 5 images from a specific artist or photographer may be reproduced
- 3.4 The created multimedia programs, containing portions of copyrighted works, may be used for a period of two years
- 3.5 The multimedia program may not be duplicated or sold
- 3.6 The multimedia program may not be placed on a network with unlimited access

“Fair Use” Guidelines for Audio-Visual Materials

1. A teacher may create

- 1.1 A single overhead transparency from a single page of a consumable work
- 1.2 A series of transparencies or 35mm slides from multiple sources, limited to one per source
- 1.3 A set of 35mm slides from a damaged filmstrip as long as they are displayed in the original order minus the damaged frames
- 1.4 An enlarged map provided the color scheme, shading, and symbols of the original are not duplicated

2. Restrictions for audio-visual duplication

- 2.1 No duplication of audio cassettes for archival purposes
- 2.2 No conversion of recordings from one format to another (cassette to CD)
- 2.3 No photocopying of “ditto” masters
- 2.4 No reproduction of any audio-visual work in its entirety
- 2.5 No conversion of one media format to another (video tape to DVD)

3. Guidelines for Recording Off-Air

- 3.1 The copying of television programs should be done at the school site and at the request of and “inspiration” of the individual teacher
- 3.2 Television recording guidelines/restrictions
 - 3.2.1 Any broadcast program may be videotaped and maintained for 45 calendar days (cable programs that are not available over broadcast TV MAY NOT be taped)
 - 3.2.2 The program may be used once by an individual teacher within 10

school days following the broadcast

3.2.3 A program may not be taped more than once, regardless of how many times it is broadcast

3.2.4 The program must be recorded in its entirety, including the copyright notice, but not all of the program must be shown

3.2.5 Programs must be shown in a location in the school which is normally used for instructional purposes

3.2.6 The program must be an integral part of the curriculum, not just entertainment

3.3 The limitations listed above do not apply to “current events” from news programs, periodicals, or newspapers

3.4 “Spontaneity” in Off-Air recording can be done by the teacher when the inspiration and decision to use the work and the moment of its use for maximum teaching value are so close in time that it would be unreasonable to expect a timely reply to a request for permission to copy from the publisher or request to tape from the media coordinator

4. Video Tape guidelines

4.1 If the educational institution purchases a copy of a videotape that says “For Home Use Only”, it may be used for “Face-to-Face” instruction if the tape is an integral part of the curriculum

4.2 Programs without a public performance contract must be used for educational purposes only, not for entertainment or reward

4.3 Most rental stores do not have the right to convey public performance rights to you

Alpine District Policies of Copyright Law Issues

Alpine District Policy 6164 and its related Rules and Regulations reflect the above items in governing practices within the schools. Items not specific in Copyright Law which reflect District Policy on Copyright Issues are specified below

Alpine District employees may:

1. BROADCAST RECORDING -- Request the school media center to record programs broadcast over open-air channels for instructional purposes

- 1.1 Show recordings one time (per class) within 10 school days of the broadcast
- 1.2 Retain recordings for evaluation for purchase purposes only an additional 45 calendar days, after which time the recording must be erased
- 1.3 Apply special circumstances to programs broadcast on KUED or KULC during the school year and between the hours of 9 am and 3 pm. (The limitations for each program are available in the printed Guide sent to each school by the State Office of Education and are noted on the District Media HomePage under the KUED/KULC section.

2. AUDIO-VISUAL -- Video Tapes, Cassette Tapes, etc.

- 2.1 Show video tapes for which public performance rights have been obtained in any school setting
- 2.2 Show video tapes for which no public performance right have been obtained provided all five “Face-to-Face Teaching Exemption” Guidelines are followed
- 2.3 Use legally purchased “motion picture” DVDs only when a Request has been signed by the teacher and the school principal. (District Media Center “motion picture” DVDs are coded DVDR. The signed Request Form must be submitted to the District Media Center before the DVDs are sent to the teacher.)
- 2.4 Use curriculum DVDs and video tapes without needing a principal’s signature
- 2.5 Preview all DVDs and video tapes for content prior to classroom presentation. Parental notification and permission prior to classroom viewing of any material in question will reduce complaints. (materials of AIDS, some art materials, or sensitive materials on the Holocaust are examples only)

3. COMPUTER SOFTWARE

- 3.1 Use software purchased for one computer in a school on another computer in the school, providing only one copy of the software is in use at a time. This includes copies made to hard disk drives and backup copies. (This does not apply to network licenses or multiple copy licenses)
- 3.2 Make archival copies. Archival copies may not be used to make additional

use copies. If software license allows making “back-up” copies, these may be used to make new copies for use if the original is damaged

3.3 Check any CD with executable files for the presence of virus before inserting in district owned equipment.

Employees of Alpine School District, by Board Policy, Procedures, and Rules & regulations may not:

1. BROADCAST RECORDING

1.1 Record programs at home and showing the program at school

2. AUDIO-VISUAL -- Video Tapes, DVDs, etc

2.1 Show video tapes or DVDs rented at commercial outlets

(contracts/agreements signed by the “renter” at time of rental or when the “check-out” card was obtained supersede the fair use guidelines above)

2.2 Use any “motion pictures”, or segment thereof, without approval in advance by the school administration

2.3 Show scenes from “motion pictures” that contain vulgarity, indecency, nudity and/or excessive violence (these scenes are strictly prohibited in the classroom and school)

2.4 Create an anthology for easier classroom use (record multiple selections onto a single tape, DVD, cassette.)

3. COMPUTER SOFTWARE

3.1 Use district equipment to make unauthorized copies of software

3.2 Use unauthorized copies of software in district owned equipment

3.3 Load software in multiple workstations or across networks outside license agreements

3.4 Download (FTP) software other than share-ware or free-ware across internet unless specific means of payment has been arranged in advance

4. MULTIMEDIA

4.1 Transfer media from the original copyrighted format to another format (Cassette tape to CD; video tape to DVD are examples only)

Conclusion

It is the intent of Alpine School District that employees follow the copyright law. Where possible, licenses, permission to duplicate, public performance rights, etc. are obtained. The district's, school's, or teacher's inability to obtain these permissions does not make unauthorized copying or use acceptable. Educators are required to obtain and file written permission to duplicate materials wherever a question exists regarding the item for which copies are desired. Letters should be addressed to the Copyright Permission Officer for the desired company; FAX and email responses are permissible.

References

This reminder is not a complete explanation of copyright issues. The following publications provide more information

- Internet Copyright Discussion Group (email to craig@cni.org)
- Reproduction of Copyrighted Works by Educators and Librarians, Government Printing Office, Washington, DC., 1988. (All quotations in this summary are taken from this document)
- What Librarians and Educators Should Know About Copyright (videotape), Cornet, 1986.
- Dukelow, Ruth H. The Library Copyright Guide, Association for Educational Communications and Technology, Washington DC, 1992.
- Helm, Virginia M. What Educators Should Know About Copyright, Phi Delta Kappa, 1986.
- Johnston, Donald F. Copyright Handbook, second edition R. R. Bowker Company, New York, 1982.
- Library of Congress Access through Internet, telnet (locis.loc.gov) or in various world wide web and gopher servers.
- Miller, Jerome K. Video Copyright Permissions, Association for Educational Communications and Technology, Washington, DC, 1989.
- Reed, Mary Hutchings. The Copyright Primer for Librarians and Educators, American Library Association, Chicago, 1987.
- Sinofsky, Ester R. Off-Air Videotaping in Education: Copyright Issues, Decisions, Implications, R.R. Bowker Co., New York, 1984
- Talab, R. S. Commonsense Copyright: A Guide to the New Technologies, McFarland & Company, Inc. Jefferson, North Carolina, 1986.
- Vleek, Charles W. Adoptable Copyright Policy: Copyright Policy and Manuals Designed for Adoption by Schools, Colleges, and Universities, Association of Educational Communications and Technology, Washington DC, 1992.