

Instruction

USE OF COPYRIGHTED MATERIALS

When making a reproduction an employee shall first ascertain whether the copying is permitted by law based on the guidelines below. If the request does not fall under a "permitted use," the employee shall obtain written permission to reproduce the material from the copyright holder(s) in the manner described below.

Requests for copyright permission shall include the following information (See appendix for sample form letter requesting permission to copy.):

1. Title, author(s), or publisher, producer(s) or distributor.
2. Edition, copyright and/or production year.
3. Exact amount of material to be used (i.e., chapter, lines, running time, scenes, etc.)
4. Reference in the letter to the initial contact individual, by name, if the initial contact was made by phone.
5. Nature of the use (i.e., how many times, when and with whom the material will be used).
6. Number of copies to be made. How the material will be reproduced.

Guidelines

Materials which do not bear notice of copyright and which are considered in the public domain may be copied in accordance with the Copyright Act. The following copyright guidelines specify which uses are permitted and which are prohibited in the use of printed material; sheet and recorded music; audio recordings - records, discs and tapes; films, video tapes, filmstrips, overhead transparencies, or slide programs; off-air taping (radio and television); rental, purchase and use of video tape; computer software; works by libraries; educational performances and displays; and emerging technologies.

1. Printed Material

a. Permitted Use - an individual educator may make:

(1) Single copies of:

- (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 collected work.
- (d) A chart, graph, diagram, drawing, cartoon or a picture from a book, magazine or newspaper.

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- (2) Multiple copies for classroom use (not to exceed one copy per student in a course) of:
 - (a) A complete poem of less than 250 words.
 - (b) An excerpt from a longer poem, but not to exceed 250 words.
 - (c) A complete article, story or essay of less than 2,500 words.
 - (d) An excerpt from a larger printed work not to exceed ten percent of the whole or 1,000 words.
 - (e) One chart, graph, diagram, cartoon or picture per book or magazine issue.

Note: All permitted copying must bear an appropriate reference (i.e., author, title, date, source, etc.)

b. Prohibited Uses - an individual educator may not:

- (1) Copy more than one work or two excerpts from a single author during one class term.
- (2) Copy more than three works from a collective work or periodical volume during one class term.
- (3) Reproduce more than nine sets of multiple copies for distribution to students in one class term.
- (4) Copy to create or replace or substitute for anthologies or collective works.
- (5) Copy "consumable" works such as workbooks, standardized tests, answer sheets, etc.
- (6) Copy the same work from term to term.

2. Sheet and Recorded Music

a. Permitted Uses - an individual educator may duplicate:

- (1) Emergency copies for an imminent performance, provided purchased replacement copies shall be substituted in a timely manner.
- (2) Multiple copies (one per student) of excerpts not constituting an entire performance unit or more than ten percent of the total work for academic purposes other than performances.
- (3) Edited or simplified purchased sheet music provided the character of the work is not distorted or lyrics added or altered.
- (4) Complete works if out of print or unavailable except in large works and used for teaching purposes.

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- (5) A single copy of a recorded performance by student to be retained by the institution or individual teacher for evaluation or rehearsal purposes.
 - (6) A single copy of recordings of copyrighted music owned by the institution for constructing exercises or examinations and retained for same.
- b. Prohibited Uses - an individual educator may not duplicate:
- (1) In order to replace or substitute for anthologies or collections.
 - (2) From works intended to be "consumable."
 - (3) For purposes of performance except as noted in an emergency.
 - (4) To substitute for purchase of music.
 - (5) Without inclusion of copyright notice on the copy.
3. Audio Recordings - Records, Disks, and Tapes
- a. Permitted Uses - An individual educator may:
- (1) Make a single copy of a portion of a sound recording for a student (i.e., song from a record,) but not the entire recording. This copy can only be used in the educational context in which it was made and may not be sold or performed for profit.
 - (2) Make a single copy of recordings of performances by students for evaluation or rehearsal purposes which may be retained by the educational institution or individual teachers.
 - (3) Make a single copy of the entire sound recording of copyrighted music or a portion thereof from sound recordings owned by an educational institution or an individual teacher for the purposes of constructing aural exercises or examinations which may be retained by the educational institution or individual teacher.
- b. Prohibited Uses - an individual teacher may not:
- (1) Duplicate audio recordings unless reproduction rights were given at time of purchase.
 - (2) Reproduce music works or convert to another format (e.g., record to tape, etc.) unless written permission is secured.

Note: Questions pertaining to making multiple copies of sound recordings should be obtained in writing from the person/agency holding the copyright.

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4. Films, Video Tapes, Filmstrips, Overhead Transparencies, or Slide Programs

a. Permitted Uses - An individual educator may:

- (1) Allow a student to make a single copy of a small portion of a copyrighted film, video tape, or filmstrip for educational purposes if the material is owned by the school which the student is attending.
- (2) Duplicate a single copy of a small portion of a film, or filmstrip for scholarly or teaching purposes.
- (3) Create a slide or overhead transparency series from multiple sources as long as creation does not exceed ten percent of photographs from one source (book, magazine, filmstrip, etc.) unless the source forbids photographic reproduction.
- (4) Create a single overhead transparency from a single page of a "consumable" workbook.
- (5) Excerpt sections of a film for a local video tape (not to be shown over cable) if excerpting does not exceed ten percent of the total nor the "essence" of the work.
- (6) Reproduce selected slides from a series if reproduction does not exceed ten percent of total nor excerpting "the essence."

b. Prohibited Uses - an individual educator may not:

- (1) Reproduce an audiovisual work in its entirety.
- (2) Convert one media format to another (e.g., film to video tape) unless written permission is secured.
- (3) Copy any portion of a film, video tape, or filmstrip sent to the school for preview or rent, or owned by another school or institution, without the expressed written permission of the copyright holder. This includes any material borrowed by the site or sent to the site for preview.

Note: The copyright of a film/video governs the 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/video via closed-circuit television outside the building is not permitted.

5. Television - Off-Air Taping

The primary purpose of the federal Guidelines for Off-air Recording of Broadcast Programming for Educational Purposes is to permit short-term use of video tape

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recording off-air in face-to-face instruction within a specified time period. These guidelines also enable staff to preview instructionally-related materials for possible acquisition through purchase, lease, rental, or free-loan agreements by the County/District.

Off-air taping and long-term retention of news programs for research and academic purposes are permitted by the copyright act in Section 108 (f-3). These fair use rights and limitations are clarified below.

* See appendix for sample off-air request form and producer inquiry letter.

a. Permitted Uses - individual educators may:

- (1) Record a broadcast program off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retain for a period not to exceed the first 45 consecutive calendar days after the date of recording. Upon conclusion of the retention period, all off-air recordings shall be erased or destroyed immediately. Broadcast programs are television programs transmitted for reception by the general public without charge. Individuals who wish to retain programs beyond the 45 day period need to obtain written approval of appropriate copyright holders.
- (2) Use off-air recordings once for each class in the course of relevant teaching activities during the first ten consecutive days and repeat 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.
- (3) After the first 10 consecutive school days, use off-air recordings to the end of the 45 calendar day retention period for evaluation purposes only (i.e., to determine if the broadcast program should be purchased for the curriculum). The program may not be used for student exhibition or any other nonevaluation purpose without written authorization.
- (4) Use all legal copies of off-air recordings provided that the copyright notice is included on the broadcast programs as recorded.
- (5) Request that off-air recording be made for fair use. This recording can only be made by and for the use of individual teachers and not regularly

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recorded in anticipation of an educator's request. A limited number of additional 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. 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.

- (6) Request that a library record and permanently retain commercial TV news programs from local, regional or national networks, interviews concerning current events, and on-the-spot coverage of new events for academic and research purposes. (This excludes documentaries, magazine format, and public affair broadcasts.) News programs are excluded from the 10 day/45 day use and retention period.

Note: Regional providers of instructional programming in California purchase off-air duplication rights on behalf of the schools they serve. Regional ITV agencies should be consulted for clarification in the use of these programs.
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b. Prohibited Uses- individual educators may not:

- (1) Tape off-air programs in anticipation of an educator's requests.
- (2) Request that a broadcast program be recorded off-air more than once for the same educator, regardless of the number of times the program may be broadcast.
- (3) Use the recording for instruction after the ten consecutive school day use period.
- (4) Hold the recording for weeks or indefinitely because:
 - (a) Units needing the program concepts are not taught within the ten day use period.
 - (b) An interruption or technical problems delayed its use.
 - (c) Another teacher wishes to use it, or any other supposedly "legitimate" educational reason.
- (5) Record programs off-air without written permission from the author/producer/distributor when a special notice is provided specifically prohibiting reproduction of any kind.
- (6) Alter off-air programs from their original content. Broadcast recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

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Note: The copying or use of subscription programs transmitted via subscription television cable services, such as HBO or Showtime, is illegal. Such programs are licensed for private/home use only and may not be used in public school. "Pay" programs received via satellite dish are subject to these guidelines.

6. Radio - Off-Air Taping

a. Permitted Uses - individual educators may:

- (1) Allow a student to make a single copy of a small portion of a copyrighted radio program for educational purposes. Such a copy may not be sold or performed for profit.
- (2) Copy radio broadcasts consistent with fair use guidelines established for off-air video taping for use in face-to-face instruction. Contractual rights may entitle an individual to retain/use educational programs (i.e. those aired over National Public Radio, Public Broadcasting, etc.) beyond the fair use period. Rights for extended use beyond the 10 day/45 day use/evaluation period should be obtained in writing from the agency or individual holding distribution rights. Retention (not use) of recorded programs is permitted until additional use rights are established.

7. Rental, Purchase and Use of Video Tape

a. Permitted Uses - unless precluded by county/district policy individual educators may:

- (1) Use purchased or rented video tapes (i.e., feature films) as part of a systematic course of instruction. Such use shall be for face-to-face instruction and must take place in a classroom or similar area devoted to instruction.
- (2) Use only lawfully-made video tapes.

b. Prohibited Uses - individual educators may not:

- (1) Use rented or purchased video tapes where a written contract specifically prohibits such use in a classroom or face-to-face teaching situation.

* See Educational Performance and Display Section

Note: County/district agencies may wish to require approval of the principal/curriculum director/department chair prior to the showing of rented or purchased feature film or video tapes.

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8. Computer Software Copyright Regulations

a. Permitted Uses - individual educators may:

- (1) Make a copy of an original computer program for the purpose of maintaining the availability of the program should it be damaged during use. Either the copy or the original may be retained in archives. Only one, either the original or the copy, may be used at any one time.
- (2) Make a copy of a program as an essential step in the utilization of the computer program as long as it is used in conjunction with the machine and in no other manner.
- (3) Make a new copy from the archival program in the event the program in use is damaged or destroyed.

b. Prohibited Uses - an individual teacher may not:

- (1) Load the contents of one disk into multiple computers for use at the same time in the absence of a license permitting the user to do so.
- (2) Load the contents of one disk into local network or disk sharing systems in the absence of a license permitting the user to do so.
- (3) Make or use illegal copies of copyrighted programs on school equipment.
- (4) Allow any student to surreptitiously or illegally duplicate computer software or access any data base or electronic bulletin board.

Note: No employee of the county/district shall surreptitiously or illegally access any data base or electronic bulletin board.
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9. Reproduction of Works by Libraries

The Copyright Act imposes extensive restrictions on reproduction of works by school libraries. Systematic duplication of multiple copies is forbidden by law with the following exceptions:

a. Permitted Uses- a librarian may:

- (1) Arrange for inter-library loans, provided that copying is not done to substitute for subscriptions to or purchase of a work.
- (2) Make up to six copies of a periodical article published within the last five years or excerpts from longer works.
- (3) Make single copies of articles or excerpts of records or longer works for students, provided the articles become the property of the student.

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- (4) Make copies of unpublished works for preservation, published works to replace damaged copies, and out-of-print works which cannot be obtained at a fair price.
- (5) Make a limited number of off-air tape recordings of TV news broadcasts for researchers' academic use and distribution to scholars.
- (6) Selectively make a copy - for preservation or security in accordance with fair use - a musical work, pictorial, graphic, sculptural work, motion picture, or other audio visual work if the current copy owned is deteriorated, lost or stolen and it has been determined that an unused copy cannot be obtained at a fair price.

b. 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.

Note: To avoid liability for copyright infringement on the part of the library or an employee as a result of unsupervised duplicating, libraries must display notices to the effect that making a copy may be subject to the copyright law (i.e., the United States Copyright Act of 1976 governs the copying of copyrighted materials. The person using this equipment is liable for any infringement.)

Additional Considerations and Clarifications

Educational Performances and Displays - The Copyright Act clearly permits the showing of a motion picture, video tape, etc. 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 curriculum and not for recreation or extracurricular use. 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.

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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 disc, satellite transmission, distance learning, CD-ROM, on-line data bases (and their downloading), informational networks, and any 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 assure compliance with the spirit and intent of the copyright law as it applies to the role of electronic information and its transfer and use.