

Reproduction of Copyrighted Works by Educators

Introduction

Administrators, teachers, teacher-librarians, and other Clark County School District (CCSD) personnel must comply with the United States copyright laws and congressional guidelines. The following are selected provisions from the United States Copyright Office *Circular 21, Reproduction of Copyrighted Works by Educators and Librarians* [Library of Congress, Copyright Office]. The internal numbering/sequence is taken directly from *Circular 21*. Administrators, teachers, and teacher-librarians should also review the entire text of *Circular 21* at: <https://www.copyright.gov/circs/circ21.pdf>.

Fair Use in General

In determining whether the use made of a work, in any particular case, is a fair use, the factors to be considered shall include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and sustainability 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 copyright work.

For a Fair Use Checklist, go to <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>.

Books and Periodicals

Guidelines

I. 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:

- 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.

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below; and,
- B. Meets the cumulative effect test as defined below; and,
- C. Each copy includes a notice of copyright.

Definitions

Brevity

- (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- (iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof, may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teacher, and
- (ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- (i) The copying of the material is for only one course in the school in which the copies are made.
- (ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- 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 and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - (a) Substitute for the purchase of books, publishers' reprints or periodicals;
 - (b) Be directed by higher authority;
 - (c) Be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

Music

Guidelines

A. Permissible Uses

- 1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
- 2. For academic purposes other than performance, single or 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 such as a section, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.

3. 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, 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 educational institution or individual teacher.
5. 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 examinations 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.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

Broadcast Programming

- (1) The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
- (2) A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
- (3) 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, 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 ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.
- (4) Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. 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.
- (5) 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.
- (6) After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (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, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
- (7) Off-air 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 physically or electronically combined or merged to constitute teaching anthologies or compilations.
- (8) All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

- (9) Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Copyright Compliance: Obtaining Permission

"In general, when using the work of others you must first determine if copyright permission is required. If the work is protected by copyright law, is not in the public domain and does not meet criteria for fair use or another specific exception in the copyright law, you must obtain permission from the copyright holder to reproduce or reuse the work" (The Campus Guide to Copyright Compliance, 2005, p. 2). For guidance on obtaining permission, go to: <https://www.janefriedman.com/sample-permission-letter/>.

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