GENERAL PERSONNEL

Administrative Procedure - Copyright Compliance

These guidelines help staff members determine if they may use non-original work freely or whether permission is needed to use or copy it. Whenever a staff member is uncertain, has questions, or needs permission from a copyright-owner to use or copy a work, he or she should contact the Superintendent or the Assistant Superintendent. The Appendix contains use resources available online.

1. Is the work copyright protected? A “no” means you may use the work freely; a “yes” or uncertain answer means you should proceed with the second query.
   a. No, if it is in the public domain.
   b. No, if it is a U.S. Government publication.
   c. No, if it is an idea or method described in copyrighted work.
   d. The presence of a copyright notice is not determinative.
   e. Yes, almost all other works.

2. Do you want to exercise one of the copyright owner’s exclusive rights? A “yes” or uncertain answer means you should proceed with the third query.
   a. Yes, if you plan to copy the work.
   b. Yes, if you plan to use the work as the basis for a new work.
   c. Yes, if you plan to electronically distribute or publish copies.
   d. Yes, if you plan to perform music, prose, poetry, a drama, or play a video or audio tape or a CD-ROM.
   e. Yes, if the plan is to publicly display the work.

3. Does your planned use of the work require the copyright owner’s permission? A “no” means you may use the work, provided that any copies contain the copyright notice as it appears in the original work; a “yes” or uncertain answer means you should contact the Superintendent or designated copyright compliance officer.
   a. No, if your planned use of printed work is within the “fair use” exception as defined in 17 U.S.C. § 107.
   b. No, if your planned use of the work is within the “library’s special rules” exception as defined in 17 U.S.C. § 108.
       - A library may make a single copy containing the copyright notice for the purpose of archiving lost, stolen, damaged, or deteriorating works.
       - A library may make a single copy containing the copyright notice for a student or staff member at no more than the actual cost of photocopying provided that the library finds that the copyrighted work cannot be obtained elsewhere at a fair price.
   c. No, if your planned use of the work is within the “educational performances and displays” exception as defined in 17 U.S.C. § 110.
      Performances by teachers or students are permitted as part of a teaching activity in a classroom or instructional setting. All other performances require permission from the copyright owner.
   d. No, if you plan to use it in an overhead or opaque projector for instructional purposes.
   e. No, if you plan to copy and use music for academic purposes, other than performance.
   f. Yes, notwithstanding the above, if you plan to create anthologies, compilations, or collective works.
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g. Yes, notwithstanding the above, if copies will be “consumed” during the course. “Consumable” works include: workbooks, exercises, standardized tests, test booklets, and answer sheets.

h. Yes, notwithstanding the above, if you plan to substitute copies for the purchase of the work; likewise, if you yearly copy the same item.

i. You must receive permission from the Superintendent or designated copyright compliance officer before showing the off-air recording of television programs, video rentals, or videos purchased for home use. You must follow any applicable license agreements.

j. You must receive permission from the Superintendent or designated copyright compliance officer before using any non-District-owned software CD-ROM or DVD products, and/or downloadable files in District-owned equipment. No one may install or download any program on District-owned equipment without the Superintendent or designee’s permission.

k. You must follow licensing agreements applicable to District-owned software and CD-ROM products.

- Licensing agreements with the manufacturer and vendor shall be followed.
- Staff members shall take reasonable precautions to prevent copying or the use of unauthorized copies on school equipment, to avoid the installation of privately purchased software on school equipment, and to avoid the use of single copy software or CD-ROM products across a network with multiple users unless the applicable license agreement permits.
- A back-up copy shall be purchased for use as a replacement when a program is lost or damaged. If the vendor is not able to supply such, the district shall make a back-up program in accordance with the terms of the applicable licensing agreement or 17 U.S.C. § 117.

Appendix 1: Copyright Fair Use Assessment Factors Checklist

Purpose and Character of Use of Copyrighted Work

Use this checklist to analyze whether material falls under the fair use doctrine. Factors favoring fair use will generally indicate that material may be used without seeking permission from the copyright owner. Factors opposing fair use require permission to reprint or adapt the material from the copyright owner. If a copyright owner is known, always request permission before using any material.

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Teaching</td>
<td>☐ Commercial activity - gain of financial rewards from (sic) use; e.g., sale of goods, services; advertising; fundraising, etc.</td>
</tr>
<tr>
<td>☐ Research/Scholarship/Academics</td>
<td>☐ Profiting from use</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Nonprofit educational institution</td>
<td>☐ Bad-faith behavior; e.g., misrepresentation of intended use</td>
</tr>
<tr>
<td>☐ Criticism</td>
<td>☐ Denying credit to original author or artist</td>
</tr>
<tr>
<td>☐ Comment</td>
<td>☐ Entertainment</td>
</tr>
<tr>
<td>☐ News reporting that is fact intensive</td>
<td>☐ News reporting with a new perspective or creative flair</td>
</tr>
<tr>
<td>☐ Used to create something different and new.</td>
<td>☐ Making a stylized version that retains the core elements of the original work</td>
</tr>
<tr>
<td>☐ Restricted access given</td>
<td></td>
</tr>
<tr>
<td>☐ Parody</td>
<td></td>
</tr>
</tbody>
</table>

### Nature of Copyrighted Work Used

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Published work</td>
<td>☐ Unpublished work</td>
</tr>
<tr>
<td>☐ Factual or nonfiction based</td>
<td>☐ Highly creative work (art, music, novel)</td>
</tr>
<tr>
<td>☐ Out of print work</td>
<td>☐ Fiction</td>
</tr>
</tbody>
</table>

### Amount and Substantiality of Copyrighted Work Used

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Small amount used</td>
<td>☐ Large portion or whole work used</td>
</tr>
<tr>
<td>☐ Portion used not central or significant to entire work</td>
<td>☐ Portion used is the heart of the work</td>
</tr>
</tbody>
</table>

### Impact on Mark of Copyrighted Work (often viewed as the most important factor)

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ User owns lawfully acquired/purchased copy</td>
<td>☐ Use could supplant original author’s sale for copyrighted work</td>
</tr>
<tr>
<td>☐ One or few copies made</td>
<td>☐ Significantly impairs the market/potential market of copyrighted work or derivative work</td>
</tr>
<tr>
<td>☐ No significant effect on market/potential market for copyrighted work</td>
<td>☐ Reasonable available licensing mechanisms</td>
</tr>
<tr>
<td>☐ No similar product marketed by copyright holder</td>
<td>☐ Affordable permission to use copyrighted work available</td>
</tr>
<tr>
<td>☐ No ready licensing or permission mechanism</td>
<td>☐ Numerous copies made</td>
</tr>
<tr>
<td>☐ Made accessible on the internet or elsewhere</td>
<td>☐ Repeated or long-term use</td>
</tr>
</tbody>
</table>

In addition to the defense of fair use, a user of a work may also raise the argument that the expression at issue is not protectable because it is composed of scènes à faire, which are elements of work that are so rudimentary, commonplace, standard or unavoidable that they do not distinguish one work in a class from another, and therefore receive no copyright protection. Examples of scènes à faire might include:

- Story elements, e.g., an adventure story involving a wizened old mentor to a young upstart
- A horror story featuring an unstoppable killer
Cliché phrases such a ruby red lips
A related concept is the merger doctrine, which provides that if an idea can be expressed in only a few limited ways, the expression merges with the idea and cannot be protected by copyright. Examples of merger may be:

- An order form for a certain type of product
- The architectural layout of a one-bedroom apartment
- Sweepstakes rules

Like questions of fair use, these issues are likely to be factually intensive and their application can be highly subjective. Consult the board attorney for guidance.

Appendix: Copyright Resource List

- U.S. Copyright Office
  http://www.copyright.gov
- Copyright Act, as amended, Title 17 of the United States Code
  www.copyright.gov/title17/92chap1.html
- Copyright Term and the Public Domain in the United States
  http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
  Cornell University Copyright Information Center
- Circular 21: Reproductions of Copyrighted Works by Educators and Librarians
- U.S. Copyright Office
  Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals - Published in House Report 94-1476
  http://www.copyright.cornell.edu/policy/Multiple_Copies_for_Classroom_Use.htm
  Cornell University Copyright Information Center
- Cornell Copyright Policies, Guidance, and Policy Interpretations
  www.copyright.cornell.edu/policy/index.htm
  Cornell University Copyright Information Center
- CONFU Conference on Fair Use.
  www.utsystem.edu/OGC/INTELLECTUALPROPERTY/confu.htm
  University of Texas
- TEACH ACT (Technology, Education, and Copyright Harmonization Act)
  University of Texas
- TEACH ACT - Amended Section 110(2) Comparison Chart, Sections 110(1)-(2)
  www.unc.edu/~unclng/TEACH.htm
  The University of North Carolina at Chapel Hill
- WIPO (World Intellectual Property Organization)
  http://www.wipo.org
- MPAA (Motion Picture Association of America)
  http://www.mpaa.org
- iCopyright.com (Automated copyright licensing system for digital content)
  www.icopyright.com
- Permissions Group (Negotiation of rights and fees for the use of copyrighted material in and for all media)
  www.permissionsgroup.com
- SIIA (Software & Information Industry Association)
  www.spa.org
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CCC Copyright Clearance Center (Copyright permission for publications worldwide)
www.copyright.com
ASCAP (American Society of Composers, Authors and Publishers)
www.ascap.com
BMI (Broadcast Music Inc.)
www.bmi.com
SESAC, Inc. (A performing rights organization)
www.sesac.com
The Harry Fox Agency, Inc. (Licensing agency for U.S. music publishers)
www.harryfox.com
The Authors Registry (Maintains an extensive directory of authors)
www.authorsregistry.org
Copyright & Fair Use (Stanford University Libraries)
http://fairuse.stanford.edu/
Copyright Society of the USA
www.csusa.org
The Copyright (Copyright Registration and Information Resource)
www.benedict.com
Crash Course in Copyright
University of Texas
www.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm
Kohn on Music Licensing
www.kohnmusic.com
National Writers Union
www.nwu.org/nwu
Poets & Writers, Inc.
www.pw.org
Project Gutenberg (Internet's oldest producer of FREE electronic books (eBooks or eTexts)
www.promo.net/pg
WATCH: Writers and Their Copyright Holders
http://tyler.hrc.utexas.edu/
World Intellectual Property Organization
www.wipo.int/portal/index.html.en

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Revised 01-24-22