

## SCHOOL DISTRICT OF NEW LONDON

### ADMINISTRATIVE GUIDELINE 771.1 - COPYRIGHT

#### A. Definitions:

1. Copyright: A copyright is a right granted by the Congress to the author or originator of certain literary or artistic productions.
2. Copyright Protection/Duration: Copyright protection exists automatically the moment an author creates a work in fixed form. Since January 1, 1978, registration is not necessary, although it is recommended by the Copyright Office. Also, since March 1, 1998, the use of a copyright notice is no longer mandatory. With the October 27, 1998 passage of the Sonny Bono Copyright Term Extension Act, copyrights are protected an additional 20 years. In general, copyright now endures for the life of the author plus an additional 70 years for works created after January 1, 1978. Copyright protection, extended 20 years, also covers the following scenarios:
  - a. *For an anonymous work, pseudonymous work, or work made for hire created after January 1, 1978:* Copyright endures for 95 years from the year of its first publication or 120 years from the year of its creation, whichever expires first
  - b. *For a work created before January 1, 1978 still in its original or renewal term of copyright:* Copyright endures for 95 years from the date it was originally secured
  - c. *For a work created before January 1, 1978, but not published, registered, or in the public domain:* Copyright endures for the life of the author plus 70 years after the author's death (but in no case shall the copyright term expire before December 31, 2002)
  - d. *For a work created before January 1, 1978, and then published on or before December 31, 2002:* Copyright endures for the life of the author plus 70 years after the author's death (but in no case shall the copyright term expire before December 31, 2047)
3. Public Domain: Any work no longer protected by copyright is said to be in the *public domain* and is free to use without obtaining permission. The Copyright Office will run a search to determine if a work is in the public domain.

See: U.S. Copyright Office, *New Terms for Copyright Protection*, November 1998.

U.S. Copyright Office, *How to Investigate the Copyright Status of a Work*, 1991.

4. Fair Use: Reproduction of copyrighted materials is permitted for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. In determining whether the use of a work in a particular case is fair use, the four criteria to follow must all be met:
  - a. **The Purpose and Character of the Use** (commercial or educational)  
The use must be for such purposes as teaching or scholarship, and must be non-profit. Fair use would probably allow teachers acting on their own to copy small portions of a work for the classroom, but would not allow a school system or institution to do so.
  - b. **The Nature of the Copyrighted Work** (textbook, workbook, test, epic poem, art work, song, limerick, novel)  
Copying portions of a news article may fall under fair use, but not copying of a workbook designed for a course of study.
  - c. **The Amount and Substantiality of the Portion Used** (How much is being copied? How many copies?)  
Copying the whole of a work cannot be considered fair use; copying a small portion may be.
  - d. **The Effect of the Use upon the Potential Market for or Value of the Copyrighted Work** (Is the owner being denied potential financial return?)  
If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials is an infringement, and making multiple copies presents the danger of greater penalties.

These four criteria provide only general minimal standards, however, and each situation must be decided on the basis of its own facts.

#### B. 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:

1. A chapter from a book
2. An article from a periodical or newspaper
3. A short story, short essay or short poem, whether or not from a collective work
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper

## A. Multiple Copies for Classroom Use

### 1. Allowed

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**.

- In general, brevity limits poems to 250 words, complete prose works to 2,500 words, prose excerpts to 1,000 words, and illustrations to one per book or periodical.
- Spontaneity requires that the copying be at the "instance and inspiration" of the individual teacher and that this inspiration to copy makes it unreasonable to expect a timely reply for a permission request.

b. Meets the **cumulative effect** test.

Cumulative effect limits the number of copies that can be made. These limits require that the copies made may only be used for one course and that no course can have over nine instances of multiple copying per term. In addition, only one complete work or two excerpts per author are allowed per term. Note that these limitations do not apply to current news.

c. Each copy includes a notice of copyright (for example, Copyright 1999 by \_\_\_\_\_) along with an appropriate citation.

### 2. Not Allowed

a. The creation of anthologies or compilations

b. Copying from "consumables" like workbooks

c. Copying to substitute for purchase

d. Copying must not be directed by a higher authority, repeated from term to term, or charged to students beyond the cost of photocopying. Teachers who plan to use a work repeatedly should obtain permission.

## B. Music for Educational Use

### 1. Allowed

The music guidelines represent the minimum standards of five permissible uses for music.

a. For *sheet music*:

- emergency copying (providing replacement copies are purchased)
- excerpts of no more than 10% of the whole work
- editing as long as the fundamental character of the work is not distorted or lyrics altered or added.

b. For *sound recordings*:

- a single copy of student performances may be made for evaluation or rehearsal purposes
- a single copy of copyrighted music owned by the school or the individual teacher may also be made, as long as it is only used for aural exercises or examinations.

2. Not Allowed

- a. Like the Classroom Copying guidelines, the creation of anthologies or compilations, copying from “consumables” like workbooks, and copying to substitute for purchase are prohibited.
- b. Emergency copying is the only allowable use of copying for performances and all copies made must include the copyright notice and a citation.

E. Off-Air Recording for Educational Purposes

1. Educational TV Network

An instructor may use all the programs aired on the Wisconsin Educational Television Network (WPNE, PBS Channel 38/ Green Bay). Each program has its own individual use rights; either seven-day, school year, or extended. See *Parade of Programs* for use rights.

2. Commercial TV Network

- a. The guidelines allow off-air tapes to be held for a 45-calendar day retention period.
- b. During the first 10 consecutive school days, the tapes may be used once in teaching activities and repeated once for reinforcement.

- c. After the first 10 days, the tapes can only be used for teacher evaluation purposes.
- d. At the end of the 45-day retention period, the tapes must be erased. Note that Cable in the Classroom programs offer extended copyright clearances.

In addition, the taping can only be made at the request of individual teachers—no advance taping in anticipation of requests is allowed. With restrictions, a limited number of copies can be made. The recorded programs may not be altered or included in anthologies or compilations. And, finally, the recording must include the copyright notice and a citation.

#### F. Library and Classroom Use of Copyrighted Videotapes

##### 1. Allowed

Section 110(1) of the Copyright Act permits the performance or display of any copyrighted work either owned by the teacher or school district in **face-to-face teaching activities** without having to obtain a public performance license if certain conditions are met.

- a. This section requires that the performance or display of a copyrighted work take place in a classroom or similar place of instruction (such as a school library).
- b. The performance or display must be directly related to the curriculum.
- c. The copyright law contains an exception which allows the lawful use of “home use only” videorecordings for public performance or display without the permission of the copyright owner.

##### 2. Not Allowed

The performance or display must not be connected with recreation or a reward. For example, treating a class to a movie (unrelated to course content) would require obtaining permission.

#### G. Duplication of Videotapes

Under limited circumstances libraries may duplicate videotapes. According to Section 108(h), videotapes may be reproduced if certain conditions are met.

1. It serves the purpose of preservation, scholarship or research
2. It is housed in the library.
3. A copy of the work cannot be obtained at a reasonable price

## H. Library and Classroom Use of Computer Software and Courseware

1. Section 117 of the Copyright Law, "Limitations on exclusive rights: Computer programs," permits the owner of a computer program to make another copy or adaptation of the program for archival (backup) purposes.
2. In addition, computer programs are covered by Section 107, "Limitations on exclusive rights: Fair use." Nonprofit libraries under Section 109(b)(2), providing a warning of copyright is affixed to the program may also lend computer programs.
3. However, if the computer program is licensed, refer to the license agreement: *limitations on exclusive rights* can be overridden by contract. By installing or using a licensed software product, you will be legally bound by the agreement. This stresses the need to review the *terms and conditions* of license agreements, especially clauses relating to permitted uses, prohibited uses, restrictions, and copying limitations. In certain circumstances, negotiating objectionable terms with the publisher may be recommended.
4. Loaning Software
  - a. Copyright notice placed on a software label should not be obscured.
  - b. License terms, if any, should be circulated with the software package.
  - c. To assist copyright owners in preventing theft, the library may add an additional notice.
  - d. Libraries generally will not be liable for infringement committed by borrowers.
5. In-Library and In-Classroom Use
  - a. License restrictions, if any, should be observed.
  - b. If only one program is owned under license, ordinarily it may only be used on one machine at a time.
  - c. Most licenses do not permit a single program to be loaded into a computer, which can be accessed by several different terminals, or into several computers for simultaneous use.
  - d. If the machine is capable of being used by a patron to make a copy of a program, a warning should be posted on the machine.

## I. Library and Classroom Use of the Internet

1. Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network.
2. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.
3. Internet users should also refer to the School District of New London Board Policy 365, Internet Acceptable Use Policy/Procedure and 366, Web Page Policy/Procedure.
4. Because the Copyright Law and related guidelines have not specifically addressed this new technology, the best strategy is to apply the existing law, especially the fair use doctrine, to the Internet:
  - a. Face-to-face teaching activities permit the display of copyrighted works, including web pages, in classrooms and similar places devoted to instruction. Downloading a web page and storing it for use in an offline browser, however, requires obtaining permission from the site's webmaster.
  - b. Copying Internet materials to paste onto a school web page or incorporate into a multimedia project also requires obtaining permission. E-mailing a site's webmaster is a good way to seek permission. Be sure to save a record of your e-mail correspondence.
  - c. Always properly credit your sources.

#### J. Library and Classroom Use of Multimedia

1. An educational multimedia project is a project which incorporates students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation
2. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines such as those for off-air taping may be relevant.
3. Allowed
  - a. **Students** may perform and display their own educational multimedia projects for the course for which they were created and may use them in their own portfolios as examples of academic work.

- b. **Educators** may perform and display their own education multimedia projects for face-to-face instruction, assigning to students for directed self-study, peer conferences, and professional portfolios.

#### 4. Limitations

- a. **Time** Educators may use their projects for teaching courses for two years. Use beyond that time period requires obtaining permission for each copyrighted portion.
- b. **Portion** Portions are generally specified "in the aggregate," meaning the total amount that can be used from a single copyrighted work.
- c. **Motion Media** Up to 10% or 3 minutes, whichever is less, from a single copyrighted work.
- d. **Text Material** Up to 10% or 1000 words, whichever is less, from a single copyrighted work. Special limitations are placed on poems.
- e. **Music, Lyrics, and Music Video** Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work.
- f. **Illustrations and Photographs** No more than 5 images by an artist or photographer. From a published collective work, no more than 10% or 15 images.
- g. **Data Sets** Up to 10% or 2500 fields or cell entries from a database or table.
- h. **Copying and Distribution** There may be no more than two copies, only one of which can be placed on reserve. An additional copy may be made for preservation (backup) purposes.

- 5. Educators and students must seek individual permissions for all copyrighted works incorporated in their educational multimedia projects for non-educational or commercial purposes, duplication beyond guidelines limitations, and for distribution over an electronic network.

#### 6. Important Reminders

- a. Exercise caution in using digital material downloaded from the Internet. Some copyrighted works can not be reused without permission or royalty payment. Also, many websites contain material posted without authorization from the copyright holder.
- b. Credit the sources and display the copyright notice and copyright ownership information; this information may be shown in a credit section.

- c. A notice that "certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use" must be included on the opening screen of the multimedia project and any accompanying print material.
- d. Alterations of copyrighted works must support specific instructional objectives. Make note that alterations have been made.
- e. Fair use guidelines do not preempt or supersede license agreements and contractual obligations.

#### K. Distance Learning

Educational Copyright Guidelines for distance learning are being developed. The Copyright Office has released its *Report on Copyright and Digital Distance Education*. The May 1999 report examines the issue in-depth and concludes by recommending amendments to sections 110(2) and 112 of the Copyright Act. The most important recommendation would update the 110(2) performance and display exemption to allow digital transmissions over computer networks. This proposed safeguards to protect content providers would accompany elimination of the physical classroom requirement.

#### L. Seeking Permission to Copy

1. If the proposed use is outside the scope of fair use, an instructor may still make use of the copyrighted work, if permission is granted.
2. The following are resources for obtaining permission to use copyrighted works when fair use limits are exceeded.

#### Copyright Permission Pages

<http://www.law.wfu.edu/library/copyright/>

An extensive "web of links" to permission pages on the Internet.

#### U.S. Copyright Office: Copyright Internet Resources

<http://lcweb.loc.gov/copyright/reces.html>

#### U.S. Copyright Office: Information Circulars and Factsheets

<http://lcweb.loc.gov/copyright/circls/>

#### Locating U.S. Copyright Holders

<http://www.lib.utexas.edu/hrc/locating.html>

#### When Works Pass Into the Public Domain

<http://www.unc.edu/~uncInlg/public-d.htm>

Copyright Clearance Center (CCC Online)

<http://www.copyright.com>

The CCC is a not-for-profit reproduction rights organization and licensor of photocopy reproduction rights.

Copyright for the High School/Amateur Theater Producer

<http://www.angelfire.com/or/Copyright4Producers/>

ADOPTION DATE:

REVISION DATE(S):

REVIEW DATE(S):

CROSS-REFERENCE: Policy 771.1 Copyright  
Exhibit 1, Permission Form  
Policy 363 Technology  
Policy 363.2 Student Technology Acceptable Use  
Policy 522.7 Staff Technology Acceptable Use

LEGAL REFERENCE: United States Copyright Act—Title 17 of the United States Code  
Digital Millennium Copyright Act of 1998  
Sonny Bono Copyright Term Extension Act of 1998

## **Bibliography**

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