

Guidelines for Use of Copyrighted Materials

Difficulty in applying the four-factor test for fair use gave rise to a number of private groups developing additional guidelines in hopes of clarifying the legal requirements. ***Please note that the guidelines included in this attachment are in fact guidelines, not codified law.*** A planned use of copyrighted materials may not fall within the guidelines, but still be permitted under the Fair Use Doctrine.

Classroom Copying (Books and Periodicals)

Representatives from educational institutions, authors, and publishers published an *AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS*. These guidelines were published in 1976 and have not been updated.

The purpose of the following guidelines is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

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:

- E. The copying meets the tests of brevity and spontaneity as defined below; and
- F. Meets the cumulative effect test as defined below; and
- G. 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:
 - c. Either a complete article, story or essay of less than 2,500 words, or
 - d. an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.
- b. *[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.

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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

- v. The copying is at the instance and inspiration of the individual teacher, and
- vi. 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

- vii. The copying of the material is for only one course in the school in which the copies are made.
- viii. 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.
- ix. 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].

Prohibitions as to 1 and 2 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, 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.

III. Copying of Library Materials

A. Library Reserves

The American Library Association wrote and published a ***Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve***. According to the guidelines, libraries may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with the guidelines governing formal classroom distribution for face-to-face teaching because the library reserve shelf functions as an extension of classroom readings

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or reflects a student's right to photocopy for personal scholastic use.

B. Interlibrary Loan

CONTU, the Commission on New Technological Uses of Copyrighted Works, wrote guidelines for interlibrary loan of periodical articles. The guidelines placed no restrictions on the number of copies of articles requested for materials published more than five years before, but for materials published in the preceding five years:

- A library may request five same-book or same-periodical loans or copies of articles, after which the library must attempt to purchase the book or periodical.
- A library may fill no more than five requests for the same book or same periodical for a given institution. The library must include a notice of copyright on all copies sent.
- The library must maintain records on loans for three calendar years after the year the loans are requested or filled.

IV. Educational Uses of Music

The following is extracted from *Guidelines for Educational Uses of Music*, as printed in the 1976 Report of the House Committee on the Judiciary (HR94-1476). While the language does not mention digital recordings since the technology did not yet exist, this remains the definitive guideline for recording music.

A. Permissible Uses

- 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.
- For academic purposes. 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% of the whole work. The number of copies shall not exceed one copy per pupil.
- For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
- 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.
- 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.
- 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 which may exist in the sound recording.)

B. Prohibitions

- Copying to create or replace or substitute for anthologies, compilations or collective works.
- 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, etc.
- Copying for the purpose of performance, except as described above.

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- Copying for the purpose of substituting for the purchase of music, except as described above
- Copying without inclusion of the copyright notice which appears on the printed copy.

C. Use of Off-Air Recordings of Broadcast Programming (Television and Radio)

The following extract is from *GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES* (1979 Negotiating Committee appointed by US House of Representatives Subcommittee on Courts, Civil Liberties and Administration of Justice).

- The guidelines were developed to apply to off-air recording by non-profit educational institutions.
- 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 days after a 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.
- 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) 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.
- 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.
- 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.
- 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.
- 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.
- All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
- Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

D. Use of Multimedia

The Fair Use Guidelines for Educational Multimedia distinguish between students and teachers. Both can incorporate portions of lawfully acquired copyrighted works into their projects so long as: a student's project is for a specific course; a teacher's project will be a teaching tool in support of curriculum-based instructional activities.

i. Students may perform and display their own educational multimedia projects for educational uses in the course for which they were created and in their own portfolios as examples of their work.

ii. Instructors may perform and display their projects for curriculum-based instruction to students in the following situations:

- For face-to-face instruction.
- For work assigned to students for directed self-study.
- For remote instruction over a secure network.

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iii. Portion limits:

- Motion media: Up to 10% or three minutes - whichever is less.
- Text material: Up to 10% or 1,000 words - whichever is less.
- Music, lyrics, music videos: Up to 10%, no more than 30 seconds.
- Illustrations and photographs: No more than five images by one artist and no more than 10% or 15 images (whichever is less) from a published collective work.
- Numerical data sets: Up to 10% or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table.