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## **BOARD ADOPTED PROCEDURE**

### Introduction

On January 1, 1978, a completely new copyright statute, the Copyright Act of 1976 (Title 17 of the United States Code), came into effect in the United States. It supersedes the Copyright Act of 1909, as amended, and has established important changes in the copyright system in the United States.

### Identification


1. Copyright laws afford protection to the authors and/or creators of original works that are created in various mediums of expression, e.g., printing; phonograph records; photographs; video and other types of tapes; film of various types; performances; any method whereby the original creative work can be communicated, presented, transmitted, or transferred by sight or sound.
  
2. Definitions
  - A. Copyright – A form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of “original works of authorship” including literary, dramatic, music, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to:
    - (1) Reproduce the copyrighted work in copies or phonorecords (see definition on page 2).
    - (2) Prepare derivative works based upon the copyrighted work.
    - (3) Distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.



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- (4) Perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works.
  - (5) Display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works including the images of a motion picture or other audiovisual work.
- B. Fair Use – Those limitations established by Public Law 34-533, Title 17 U.S.C. 107, on the exclusive rights of the copyright holder.
- C. Display – To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, or show individual images nonsequentially.
- D. Device, Machine, or Process – One that is now known or will be later developed. A device used as a means of duplicating or storing duplicated materials or images.
- E. Copies – Material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copied” includes the material object, other than a phonorecord, on which the work is first fixed (see phonorecords below).
- F. Literary Works – Works other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.
- G. Publication – The distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- H. Phonorecords – The material objects in which sounds other than those accompanying a motion picture or other audiovisual work are fixed by any method now known or later developed, and from which the

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sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which sounds are first fixed.

3. Legal Constraints - It is illegal for anyone to violate any of the rights provided to the owner of a copyright by the act.

4. Exemptions –

A. Section 105 through 118 of the Copyright Act (P.L. 94-553) establish limitations on these rights. A portion thereof is provided below (also see the Procedures portion for more specific information).

(1) The doctrine of “Fair Use” (which is now given a statutory basis by Section 107 of the act – see definition of Fair Use Doctrine elsewhere in this procedure).

(2) A “compulsory license” under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions.

B. 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 substantiality 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 values of the copyrighted work.

C. Exemption of Certain Performance and Displays – The following is not an infringement of copyright:

Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational

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institution, in a classroom or similar place devoted to instruction, unless in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made.

### Procedures

All District personnel will comply with Title 17 of the U.S. Code, Section 107 through 118 of the Copyright Act (P.L. 94-553), as identified in the U.S. Code publication and as excerpted in this procedure. Any individual who violates this law in the course of their work associated with the District does so at their own risk.

The Guidelines from the Copyright Office of the Library of Congress Circular R-21 as they pertain to educators and librarians are as follows:

#### Books and Periodicals


1. Single Copying for Teachers – (Also refer to Section 3 of this procedure for prohibitions.) 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.
  
2. Multiple Copies for Classroom Use – (Also refer to Section 3 of this procedure for prohibitions.) 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:



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- 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.
- D. Brevity – Definition
- (1) 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.
- (2) 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.
- NOTE:** Each of the numerical limits stated in (a) and (b) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.
- (3) Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
- (4) “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 (and which) fall short of 2,500 words in their entirety. Paragraph 2 Prose, 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

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containing not more than 10% of the words found in the text thereof, may be reproduced.

E. Spontaneity

- (1) The copying is at the instance and inspiration of the individual teacher, and
- (2) 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.


F. Cumulative Effect

- (1) The copying of the material is for only one course in the school in which the copies are made.
- (2) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, not more than three from the same collective works or periodical volume during one class term.
- (3) There shall not be more than nine instances of such multiple copying for one course during one class term.

**NOTE:** The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

3. 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 there from are accumulated or reproduced and used separately.

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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:


- (1) Substitute for the purchase of books, publishers’ reprints or periodicals,
- (2) Be directed by higher authority,
- (3) 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.

- (1) Music – In a joint letter dated April 30, 1976, representatives of the Music Publishers’ Association of the United States, Inc., the National Music Publishers’ Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to the chairman of the copyright committee and presented the following guidelines.
- (2) Guidelines for Educational Uses of Music – The purpose of following guidelines is to state the minimum and not maximum standards of educational fair use under Section of HR 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 (see definition of Fair Use).


4. Permissible Uses

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- A. 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.
- B. 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.
- C. 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.
- D. A single copy of recordings of performances by students may be made for evaluation rehearsal purposes and may be retained by the educational institution or individual teacher.
- E. 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.)

5. Prohibitions

- A. Copying to create or replace or substitute for anthologies, compilations, or collective works.
- B. 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.
- C. Copying for the purpose of performance, except as in 4 A above.

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- D. Copying for the purpose of substituting for the purchase of music, except as in 4 A and B above.
- E. Copying without inclusion of the copyright notice which appears on the printed copy.