

Superintendent Procedure 2025SP

Copyright Acquisition & Compliance

Approved by: s/José Banda Date: 10/3/12

José Banda, Superintendent



Copyrighted works shall only be used to the extent authorized by law, Board Policy No. 2025 and Superintendent Procedure 2025SP. While this procedure provides guidance to District employees regarding copyright acquisition and compliance, it is the responsibility of each district employee to ensure that their actions comply with the Federal Copyright Law, Board Policy No. 2025 and Superintendent Procedure 2025SP. To assure compliance and protect employees and the district from legal redress for alleged violations of the law, the employee performing copying activities must determine that the activities are within the law.

Any employees who, after having read this procedure, still have questions regarding this procedure or copyright issues generally, should consult the School Librarian, then their School Principal, then the Manager of Library Services, and lastly the General Counsel's Office.

I. Copyright

- A. Copyright laws afford protection to the authors and/or creators of original works that are created in various mediums of expression. For works created on or after January 1, 1978, the law extends protection to the work for the life of the author plus 70 years. For anonymous works and works created by an employee at the request of his/her employer, the period of protection extends to the year of publication plus 95 years or the year of creation plus 120 years, whichever expires first. For works published between 1964 and 1977, the copyright protection extends for 95 years after the publication date. For works published between 1923 and 1963, the protection will last for 95 years from the date of publication if the author applied for a renewal of the copyright.
- B. Any works for which copyright has expired or were published prior to 1923 are in the public domain. Works which have fallen into the "public domain" are available for use without permission from or payment to the copyright owner.
- C. The penalties for infringing copyright can be severe. For innocent infringements, statutory damages can range from the hundreds to the thousands of dollars. For a willful infringement, the monetary damages can reach tens of thousands of dollars per copyright violated.

II. Categories of Copyright

Copyrighted works or materials fall into various categories, including but not limited to, the following:

- A. Literary Works
- B. Musical Works (including accompanying words)
- C. Dramatic Works (including accompanying music)
- D. Pantomimes and choreographic works
- E. Pictorial, graphic and sculptural
- F. Motion pictures and audio-visual works
- G. Sound recordings
- H. Digital Media (including software)

III. Exemptions: Allowable Uses of Materials under Copyright

A. Fair Use

Notwithstanding the exclusive rights of the copyright owner, there are certain circumstances under which it is permissible to reproduce or display copyrighted works and materials without the permission of the owner. Under the "fair use" doctrine, unauthorized reproduction of copyrighted materials is permissible for such purposes as criticism, comment, news reporting, teaching, scholarship or research. If duplicating or changing a product is to fall within the bounds of fair use, these four standards must be met for any of the foregoing purposes:

1. THE PURPOSE AND CHARACTER OF THE USE. The use must be for such purposes as teaching or scholarship.
2. THE NATURE OF THE COPYRIGHTED WORK. Staff may make single copies of: book chapters for use in research; instruction or preparation for teaching; articles from periodicals or newspapers; short stories, essays or poems; and charts, graphs, diagrams, drawings, cartoons or pictures from books, periodicals, or newspapers in accordance with these guidelines.
3. THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED. Copying the whole of a work cannot be considered fair use; copying a small portion may be if these guidelines are followed.
4. THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK. If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials may be an infringement, and making multiple copies presents the danger of greater penalties.

B. Materials in Print

1. Single copies: In preparing for instruction, a teacher may make or have made a single copy of:
 - a. A chapter from a book;
 - b. An article from a newspaper or periodical;
 - c. A short story, short essay or short poem; or

- d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper
- 2. Multiple copies: A teacher may make multiple copies not exceeding more than one per pupil, for classroom use or discussion if the copying meets the tests of “brevity, spontaneity and cumulative effect” set by the following guidelines. Each copy must include a notice of copyright.
 - a. Brevity
 - i. Poetry: A complete poem, if less than 250 words and two pages long, may be copied; excerpts from longer poems cannot exceed 250 words;
 - ii. Prose: Complete articles, stories or essays of less than 2500 words or excerpts from prose works less than 1000 words or 10% of the work, whichever is less may be copied; in any event, the minimum is 500 words;
 - iii. Note: Each numerical limit may be expanded to permit the completion of an unfinished line of a poem or prose paragraph.
 - iv. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue may be copied;
 - v. “Special” Works: “Special” works cannot be reproduced in full; this includes children's books combining poetry, prose or poetic prose. Short special works may be copied up to two published pages containing not more than 10 percent of the work.
 - b. Spontaneity – The copying should be at the “instance and inspiration” of the individual teacher when there is not a reasonable length of time to request and receive permission to copy.
 - c. Cumulative Effect – Teachers are limited to using copied material for only one course in the school in which copies are made. No more than one short poem, article, story or two excerpts from the same author may be copied, and no more than three works can be copied from a collective work or periodical column during one class term. Teachers are limited to nine instances of multiple copying for one course during one class term. Limitations do not apply to current news periodicals, newspapers and current news sections of other periodicals.
- 3. Prohibitions as to Copying Materials for Classroom Use: Notwithstanding any of the above, the copyright law prohibits using copies to replace or substitute for anthologies, consumable works, compilations or collective works. “Consumable” works include: workbooks, exercises, standardized tests, test booklets and answer sheets. Teachers cannot substitute copies for the purchase of books, publishers' reprints or periodicals, nor can they repeatedly copy the same item from term-to-term. Copying cannot be directed by a “higher authority,” students cannot be charged more than actual cost of photocopying.

Teachers may use copyrighted material in overhead or opaque projectors for instructional purposes.

C. Copying and use of Digital Materials – Digital Millennium Copyright Act

1. Fair use does not include posting a student or teacher's work on the Internet if it includes portions of copyrighted materials. Permission to copy shall be obtained from the original copyright holder(s) before such projects are placed online.
2. Care should be taken in circumventing any technological protection measures. While federal law prohibits circumventing technological protection measures that prevent unauthorized access to a copyrighted work, it does not prohibit the act of circumventing a technological protection measure that prevents copying of a copyrighted work (as such copying may constitute fair use).
3. The opening screen of such presentations shall include notice that they were prepared under the fair use exemption of the US copyright law and are restricted from further use.
4. Students may incorporate portions of copyrighted materials in producing educational multimedia projects for a specific course, and may perform, display or retain the projects.
5. Educators may perform or display their own multimedia projects to students in support of curriculum-based instructional activities. These projects may be used:
 - a. In face-to-face instruction;
 - b. In demonstrations and presentations, including conferences;
 - c. In assignments to students;
 - d. For remote instruction if distribution of the signal is limited;
 - e. Over a network that cannot prevent duplication for fifteen days, after fifteen days a copy may be saved on-site only; or
 - f. In their personal portfolios.

Educators may use copyrighted materials in a multimedia project for two years, after that permission must be requested and received.

6. The following limitations restrict the portion of any given work that may be used pursuant of fair use in an educational multimedia project:
 - a. Motion media: ten percent or three minutes, whichever is less
 - b. Text materials: ten percent or 1,000 words, whichever is less
 - c. Poetry: an entire poem of fewer than 250 words, but no more than three poems from one author or five poems from an anthology. For poems of greater than 250 words, excerpts of up to 250 words may be used, but no more than three excerpts from one poet or five excerpts from an anthology
 - d. Music, lyrics and music video: Up to ten percent, but no more than thirty seconds. No alterations that change the basic melody or fundamental character of the work.
 - e. Illustrations, cartoons and photographs: No more than five images by an artist, and no more than ten percent or fifteen images whichever is less from a collective work.
 - f. Numerical data sets: Up to ten percent or 2,500 field or cell entries, whichever is less.

IV. Performance Rights Exceptions

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 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.

- A. Video/Films in the classroom: A video/film may legally be shown without permission of the copyright owner only if the exhibition takes place in a classroom setting with a teacher present and the video/film is an essential element of the current curriculum. In general, this would NOT include videos/films shown during snow delays, after school programs, staffing emergencies, or for entertainment purposes. District employees who seek to show videos/films for entertainment purposes must ensure that they obtain the necessary authorization and/or licensing.
- B. Musical or Artistic Performances
 - 1. Performances by teachers or students of copyrighted dramatic works without authorization from the copyright owner are permitted as part of a teaching activity in a classroom or instructional setting. All other performances require permission from the copyright owner.
 - 2. A teacher may make a single copy of a song, movement, or short section from a printed musical work that is unavailable except in a larger work for purposes of preparing for instruction.
 - 3. A teacher may make multiple copies for classroom use of an excerpt of not more than 10% of a printed musical work if it is to be used for academic purposes other than performance, provided that the excerpt does not comprise a part of the whole musical work which would constitute a performable unit such as a complete section, movement, or song. In an emergency, a teacher may make and use replacement copies of printed music for an imminent musical performance when the purchased copies have been lost, destroyed or are otherwise not available.
 - 4. A teacher may make and retain a single recording of student performances of copyrighted material when it is made for purposes of evaluation or rehearsal.
 - 5. A teacher may make and retain a single copy of excerpts from recordings of copyrighted musical works for use as aural exercises or examination questions.
 - 6. A teacher may edit or simplify purchased copies of music provided that the fundamental character of the music is not distorted. Lyrics shall not be altered or added if none exist.
 - 7. Performance by teachers or students of copyrighted musical works is permitted without the authorization of the copyright owner as part of a teaching activity in a classroom or instructional setting. The purpose shall be instructional rather than for entertainment.
 - 8. Performances of nondramatic musical works which are copyrighted are permitted without the authorization of the copyright owner, provided that:
 - a. The performance is not for a commercial purpose;

- b. None of the performers, promoters or organizers are compensated; and
- c. Admission fees are used for educational or charitable purposes only.
- d. All other musical performances require permission from the copyright owner.

V. Off Air Recording of Copyrighted Programs (non-cable transmission only)

- A. Television programs, excluding news programs, transmitted by commercial and non-commercial television stations for reception by the general public without charge may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a school for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of this retention period, all off-air recordings must be erased or destroyed immediately.
- B. Off-air recording may be used once by individual teachers in the course of instructional activities, and repeated once only when reinforcement is necessary within a building, during the first ten (10) consecutive school days, excluding scheduled interruptions, in the forty-five (45) calendar day retention period.
- C. 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.
- D. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers. Each additional copy shall be subject to all provisions governing the original recording.
- E. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum. Permission must be secured from the publisher before the recording can be used for instructional purposes after the ten (10) day period.
- F. 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.
- G. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

VI. Computer Software

Schools have a valid need for high-quality software at reasonable prices. To assure a fair return to the authors of software programs, the school district shall support the legal and ethical issues involved in copyright laws and any usage agreements that are incorporated into the acquisition of software programs.

To this end, the following guidelines shall be in effect:

- A. All copyright laws and publisher license agreements between the vendor and the district shall be observed;
- B. Staff members shall take reasonable precautions to prevent copying or the use of unauthorized copies on school equipment;
- C. A back-up copy shall be purchased, at least, for use as a replacement when a program is lost or damaged. If the vendor is not able to supply such, the district, in accordance with P.L. 96-517, Section 7(b), shall make a back-up program and attest that the program will be used for replacement purposes only;
- D. A computer program may be adapted by adding to the content or changing the language. The adapted program may not be distributed.

VII. District Copyrighted Materials

Staff may make copies of copyrighted school district materials upon one of the following conditions:

- A. Permission is expressly provided by authorized District personnel when the original materials are distributed;
- B. Permission is expressly provided on the district website in which the materials are distributed;
- C. District staff who have questions about making copies of district copyrighted materials may contact the Instructional Materials Specialist in the Professional Library (252-0227).

VIII. Library Copying

A library may make a **single** copy or three digital copies of:

- A. An unpublished work which is in its collection.
- B. A published work in order to replace it because it is damaged, deteriorated, lost or stolen, provided that unused replacement cannot be obtained at a fair price.

- C. A work that is being considered for acquisition, although use is strictly limited to that decision. Technological protection measures may be circumvented for purposes of copying materials in order to make an acquisition decision.

A library may provide a single copy of copyrighted material to a student or staff member at no more than the actual cost of photocopying. The copy must be limited to one article of a periodical issue or a small part of other material, unless the library finds that the copyrighted work cannot be obtained elsewhere at a fair price. In the latter circumstance, the entire work may be copied. In any case, the copy shall contain the notice of copyright and the student or staff member shall be notified that the copy is to be used only for private study, scholarship or research. Any other use may subject the person to liability for copyright infringement.

At the request of a teacher, copies may be made for reserve use. The same limits apply as for single or multiple copies designated in the “Materials in print” section above.

IX. Reminders

- A. Materials on the Internet should be used with caution since they may be copyrighted.
- B. Proper attribution (author, title, publisher, place and date of publication) should always be given.
- C. Notice should be taken of any alternations to copyrighted works, and such alternations should only be made for specific instructional objectives.

Approved: October 2012

Revised:

Cross Reference: Policy No. 2025