

COPYRIGHT REGULATIONS FOR POLICY 715

A. Definitions

1. "Copyright" - Copyright is a right granted by Congress to the author or originator of certain literary or artistic productions whereby his/her works are protected for a period of his/her lifetime, renewable for an additional 50 years, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Copyright protection exists for original works of authorship fixed in any tangible medium of expression, now known or later developed, from which the works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- a. literary works;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music;
- d. pantomimes and choreographic works;
- e. pictorial, graphic and sculpture works;
- f. motion pictures and other audiovisual works; and
- g. sound recordings.

A work is protected by the copyright law from the moment of its creation, however, the right cannot be enforced in the courts until the work is registered with the U.S. Copyright Office.

2. "Fair Use" - Under the law, it is fair use to reproduce copyrighted materials for purposes of criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research. Four criteria will be applied in judging whether or not there has been an infringement:
 - a. The purpose and character of the use - (commercial or educational).
 - b. The nature of the copyrighted work - (textbook, workbook, tests, poetry, novel, music)
 - c. The amount and substantiality of the portion used - (How much is being copied? How important is the copied portion to the entire work? How many copies are being made?)
 - d. The effect on the potential market for or value of the work - (Will the owner suffer unreasonable financial loss?)

B. Photocopying Guidelines

1. Classroom Teachers

The guidelines for education use of photocopying emphasize that in their application, three standards must be considered:

- a. Brevity - The guidelines provide a quantitative measure of what might reasonably be considered minimum fair use. Different measures apply, depending on whether the work is a poem, prose, or an illustration.
- b. Spontaneity - This means that the copying is done at the instance and inspiration of the individual teacher, and 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.
- c. Cumulative Effect - This means that there is no intention to anthologize the reproduced materials, that the copying made, that not more than three from the same work during one term are involved, and that not more than nine instances of such multiple copying for one course during one term are anticipated.

Among the most frequently copied items are consumable materials (workbooks, exercises, standardized test booklets and answer sheets). The guidelines state that any such copying, whether single or multiple copies, is not fair use and constitutes a definite infringement.

If a teacher wishes to copy materials in a situation that goes well beyond what the guidelines indicate as fair use, he/she should consider asking for permission. If the material is educationally worthwhile, it should be worth the effort to seek permission for classroom use.

A teacher may:

- a. Make a single copy of the following:
 - a chapter from a book
 - an article from a periodical or newspaper
 - a short story, short essay, or short poem
 - a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical or newspaper
 - a short excerpt (up to ten percent) from a performable unit of music such as a song, movement, or section, for study purposes.
- b. Make multiple copies (not to exceed one per student) for classroom use of the following:
 - a complete poem if less than 250 words
 - a poetic excerpt if less than 250 words
 - a prose excerpt of from 500 to 1,000 words
 - one illustration (chart, diagram, graph, drawing, cartoon, or picture) per book or periodical issue
 - an excerpt of up to two pages of "Special works" containing words and pictures
 - up to ten percent of a performable unit of music (song, movement, section) for academic purposes other than performance

- c. Make a single recording of student performances for evaluation, rehearsal or archival purposes.
- d. Make a single recording of aural exercises or copyright materials
- e. Make an emergency replacement copy to substitute for a purchased copy that is not available for imminent musical performance.

A teacher may not:

- a. Copy to make anthologies or compilations or to replace or substitute for them.
- b. Copy from works intended to be consumable (workbooks, exercises, standardized test booklets, and answer sheets)
- c. Copy to substitute for purchase of books, periodicals, music, or recordings.
- d. Copy on direction from high authority (supervisor, coordinating teacher, or principal).
- e. Copy the same item from term to term without securing permission.
- f. Utilize more than nine instances of multiple copying per course, per term.
- g. Copy more than one short work or two excerpts from one author's works in any one term.
- h. Employ a successful use of multiple copying developed by another teacher without also securing permission from the copyright owner.
- i. Make copies of music or lyrics for performance of any kind in the classroom or outside of it, with the emergency exception noted above in item (e) of the "teacher may" section.
- j. Copy protected materials without inclusion of a notice of copyright.
- k. Charge students more than the actual cost of the authorized copies.

Teachers should not ask other school staff members, such as librarians, copy center personnel, or school aides to do copying for them that is not fair use and for which no permission has been obtained. It may make these individuals liable for the infringement along with the individual initiating the request.

Teachers should instruct students about the implications of copyright. Students frequently have occasion to use copying equipment, especially at the high school level, and should be aware of the provisions under fair use for copying material used for research and scholarship.

2. Libraries

Library personnel may:

- a. Honor requests for single copies of one article, another complete small portion of a periodical or book, or an excerpt (ten percent of a performable unit of music) from a phonograph record provided:
 - (1) the copy is to be used only for private study, scholarship or research; and
 - (2) the request is not perceived to be part of a concerted effort to secure multiple reproduction.
- b. Make multiple copies for a teacher if the item meets the test of brevity, spontaneity and cumulative effect under the fair use guidelines.
- c. Reproduce and distribute a copy of an entire out-of-print work, if it has been established that no copy can be obtained at a fair price.
- d. Make a limited number of off-the-air tape recordings of daily newscasts for distribution to scholars and researchers. (The term "off-the-air taping" refers to making reproductions of the sound, or pictures and sounds from radio and television broadcasts by recording devices).
- e. Copy an unpublished work in the library's collection for preservation or security or for research use in another library open to the public.
- f. Copy to preserve a deteriorating published work, if unreasonable effort has not produced an unused copy at a fair price.
- g. Participate in copying for interlibrary loan arrangements that do not involve such aggregate quantities as to substitute for subscription or purchase of a work.

Library personnel may not:

- a. Make copies for the members of a class if there is reason to suspect that all the students have been instructed to obtain copies individually.
- b. Make copies on a systematic basis to avoid subscription or purchase at their own library or another.

- c. Make copies of musical works, pictorial, graphic or sculptural works, motion pictures, or other audio-visual works (except daily news programs), unless it is for the purpose of preservation or security or in accordance with provisions dealing with fair use.
- d. Copy without including a notice of copyright.

Library personnel are not liable for unlawful copying done by teachers or students on their own as long as each machine displays a notice that the making of a copy may be subject to the copyright law. Such signs will be provided by the instructional support services.

C. Videotaping Guidelines

The following guidelines apply only to off-air television program recording:

1. A school may videotape a broadcast program and retain it for a period not to exceed 45 calendar days. 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.
2. The videotape may be used once by individual teachers and may be repeated only once for instructional reinforcement during the first ten consecutive school days in the 45 day period.
3. Individual teachers must request that a specific program be recorded. General recording by the audiovisual department of all programs in anticipation of teacher requests is not permissible.
4. 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.
5. After the first ten days, the off-air recording may be used up to the end of the 45 day retention period only for evaluation purposes (i.e. to determine whether or not to include the broadcast program in the teaching curriculum). It may not be used for student exhibition or any other non-evaluation purpose without authorization.
6. 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.
7. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

D. Computer Software Guidelines

The Board recognized that computer software piracy is a major problem for the industry and that violations of computer copyright laws contribute to higher costs and greater efforts to prevent copies and/or lessen incentives for the development of good educational software.

Therefore it is the intent of the Portage Community School District to adhere to the provisions of copyright laws in the area of computer programs.

In an effort to discourage violation of copyright laws and to prevent such illegal activities, the Board shall require the following:

1. Ethical, legal and practical problems caused by software piracy will be included in the curriculum.
2. District employees will be expected to adhere to provisions of state and federal law when making copies of computer programs.
3. When software is to be used on a network, measures will be taken to secure software from copying.
4. Illegal copies of copyrighted programs will not be made or used on school equipment.
5. Legal or insurance protection will not be extended to employees who violate copyright laws.
6. The district administrator, or designee, will be the only individual authorized to sign license agreements for software for schools in the district. (A copy of all software license agreements will be kept on file by the director of technology).
7. The building principal, building media specialist and director of technology will be responsible for maintaining rules to be used in implementing this policy at the school level.

E. Permission to Use Copyrighted Materials

There are many uses that can be made of copyrighted materials beyond those provided under fair use, if permission is granted first. There may be a charge for such use or it may require no payment, provided ownership is recognized.

When seeking permission to use copyrighted materials, these guidelines should be followed:

1. The ownership of a work should be determined from the title page or the reverse of it. The library media specialist can serve as a resource in finding addresses of publishers/producers.
2. The letter of request should contain the following information:
 - a. Title, author/editor/producer and edition
 - b. Exact materials to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
 - c. Number of copies to be made
 - d. Use to be made of duplicated materials
 - e. Form of distribution (classroom, newsletter, etc.)
 - f. Whether or not the material is to be sold
 - g. Type of reproduction (ditto, photocopy, slide, tape, etc.)

F. Penalties for Infringement

Substantial penalties are provided for infringement of a copyright.

1. An injunction to stop the infringement is most likely to be the first actions.
2. Payment of actual damages for financial loss suffered by the copyright owner may be required.
3. Statutory damages, for which no actual need be proved, may be assessed.

An exception to the statutory damages is made in the case of teachers, provided the teacher believed and had reasonable grounds to believe that it was fair use. In this case, the teacher may be found guilty but the damages do not have to be paid.

LEGAL REF: PL 94-553, Federal Copyright Law 1976
PL 96-517, Title 17 and Public Law
Digital Millennium Copyright Act of 1998
Technology, Education, and Copyright Harmonization Act (TEACH Act) of 2002