

## 4675-R Copyright

### WORKS PROTECTED BY COPYRIGHT

Copyright protection extends to literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic, and sculptural works, computer programs, motion pictures, and other audiovisual works; including television and sound recordings.

Unpublished works by U.S. and foreign authors are protected by the copyright statute, as are published works by U.S. authors. The published works of foreign authors are subject to copyright under certain conditions, including coverage under national treaties such as the Universal Copyright Convention.

U.S. government works are excluded from copyright protection. The new law does not change the basic premise of prior law that works produced for the U.S. government by its officers and employees are not subject to copyright.

### INFRINGEMENT

One who violates the rights of the copyright owner is a copyright infringer. Remedies available to the copyright holder for infringement include damages (actual or statutory, the latter set by statute from \$100 to \$50,000), injunction, recovery of court costs and attorney's fees.

### PERMISSION TO DUPLICATE

Any staff member of Campbell County School District shall consult with their principal/supervisor to verify that duplicating of a particular material is permitted or to obtain permission for the copying of such material.

### PRINTED MATERIALS

- Single Copying for Teachers - A single copy may be made of any of the following by or for a teacher at their individual request for scholarly research of use in teaching or preparation to teach a class:
  - a chapter from a book
  - an article from a periodical or newspaper
  - a short story, short essay, or short poem, whether or not from a collective work
  - a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper
- 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:
  - the copying meets the tests of brevity and spontaneity
    - **Brevity**
      - ❖ Poetry - A complete poem if less than 250 words and printed on not more than two pages, or if from a longer poem, an excerpt of not more than 250 words.

- ❖ Prose - Either a complete article, story, or essay of less than 2,500 words; or 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

[Each of the numerical limits stated above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- ❖ Illustration - one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
  - ❖ “Special works - certain works in poetry, prose or “poetic prose”, often combining language with illustrations, and which are sometimes intended for children and at others times for a more general audience, and fall short of 2,500 words in their entirety. The prose definition above notwithstanding, “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such “special works” and containing not more than 10% of the words found in the text thereof may be reproduced.
- **Spontaneity** - The copying is at the instance and inspiration of the teacher, and 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.
- the copying meets the cumulative effect test as defined below:
    - The copying of the material is for only one course in the school in which the copies are made,
    - Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author and not more than three from the same collective work or periodical volume during the class term, and
    - No more than nine instances of such multiple copying for one course are permitted during one class term.
  - each copy includes a notice of copyright.
- Prohibitions Notwithstanding any of the above, any of the following shall be prohibited:
    - 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.
    - 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.

- Copying shall not:
  - substitute for the purchase of books, publishers' reprints, or periodicals;
  - be directed by higher authority;
  - be repeated with respect to the same item by the same teacher from term to term.
- No charge shall be made to the student beyond the actual cost of the photocopying.

### **TELEVISED PROGRAMS/RECORDINGS**

- A live television broadcast may be viewed by the teacher and students during scheduled class time, so long as no admission is charged, either directly or indirectly.
- Recording Television Broadcasts for Later Viewing
  - A broadcast program may be recorded off-air simultaneously with broadcast transmission and retained for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording.
  - 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.
  - The recordings are to be shown to students no more than two times during the 10-day period and the second time only for necessary instructional reinforcement.
  - The recordings may be viewed at the 10-day period only by the faculty for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
  - All copies of off-air records must include copyright notice on the broadcast program as recorded.
  - The "off-air recordings" may not be physically or electronically altered or combined with others to form anthologies. Also off-air records need not be used or shown in their entirety.
  - If several faculty request the recording of the same program, duplication is permitted but all copies are subject to restrictions of the original recording.
  - These guidelines do not apply to programs only available from cable television services such as HBO, the Disney Channel, ESPN, or C-Span or streaming services such as Netflix, Amazon, and Hulu. Streaming services are generally governed by membership agreements which forbid streaming or use of subscribed content in a classroom. If the membership agreement prohibits the showing of a work in a classroom, that work may not be shown in class, unless;

- The school district subscribes to the streaming service;
    - The use complies with the terms and conditions of the member agreement; and
    - The use of the recording complies with the requirements and conditions described above.
  - Some public television programming has different rules than commercially broadcast television. For PBS programming the following will apply:
    - only a single copy of the program may be recorded by an educational institution and it may not be duplicated;
    - programs may be recorded with prior request from a faculty member may be recorded and shown each time a program broadcast;
    - the program may be retained for seven consecutive days following the broadcast but must be erased at the end of the 7<sup>th</sup> day;
    - the program may be transmitted on closed circuit systems, closed cable systems, or Educational Broadband Service (EBS) systems
    - the program may be shown as often as needed during the 7-day period; and
    - the educational or public service coordinator must be contacted before a PBS program is videotaped for educational use.
- In-Classroom Use of Copyrighted Recordings – In classroom performance of a lawfully-made copyrighted recording, including, but not limited to streaming social media videos from sources such as YouTube or other public streaming services is permissible under the following conditions:
  - the performance must be by instructors (including guest lecturers) or by students;
  - the performance directly supports the adopted curriculum for the course;
  - the performance is in connection with the face-to-face teaching activities;
  - the entire audience is involved in the teaching activity;
  - the entire audience is in the same room or same general area;
  - the teaching activities are conducted by a nonprofit education institute;
  - the performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium or workshop; and
  - the recording is lawfully made or the person responsible has no reason to believe that the recording was unlawfully made.
- On-line Classroom Use of Recordings - Televised or recorded works that may be lawfully used for in-person classroom teaching or instruction may not necessarily be used for teaching on-line classes. The right to show performances for on-line classes is more limited, and governed by the Fair Use requirements in 17 USC 110(2). Use of protected works for on-line classes or instruction is limited to reasonable and limited portions of the work. Any person intending to use recordings for on-line classes or instruction shall consult with School District administration and legal counsel to determine if the proposed use complies with the law and to determine the limits and parameters of such use.

- Music
  - 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 other than performance;
      - ❖ Multiple copies of excerpts or 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.) may be made by or for a teacher solely for the purpose of scholarly research or in preparation to teach a class as long as the work is:
        - ✓ confirmed by the copyright propriety to be out of print or
        - ✓ unavailable except in a larger work.
      - ❖ 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 School District or individual teachers.
      - ❖ A single copy of a sound recording may be made from copyrighted music from sound recordings owned by the School District or any individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the School District 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).
  - Non-Permissible Uses
    - Copying to create, replace or substitute for anthologies, compilations or collective works is prohibited.
    - 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 is prohibited.
    - Copying for the purpose of performance, except as listed above is prohibited.
    - Copying or the purpose of substituting for the purchase of music, except as listed above is prohibited.
    - Copying without inclusion of copyright notice which appears in the

printed copy is prohibited.

## **PUBLIC PERFORMANCE**

- Public performance in a classroom is allowed if the performance is a face-to-face teaching activity directly related to instruction.
- Performances of the defined works must only be by the instructor or pupils.
- Exemption only applies to performances related to teaching activities which involve systematic instruction.
- The performance must take place in a classroom or similar place devoted to instruction.
- The exemption would not apply to “performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class.”

## **COMPUTER SOFTWARE AND APPLICATIONS**

- Duplication
  - The owner of a copy of a computer program is not infringing on the copyright by making or authorizing the making of another copy or adaptation of that program if the following criteria are met:
    - That the new copy of adaptation is created in order to be able to use the program in conjunction with the machine and is used in no other manner.
    - That the new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.
    - Any copies prepared or adapted may not be leased, sold or otherwise transferred without the authorization of the copyright owner.
    - Transferring Programs to Hard Disk-the hard disk versions could become the working copies with the original, purchased disks being designated archival copies.
- Networking and Multiple Machine Loading
  - Once transferred through a network, multiple copies are created, even if they are transient in nature
  - The transferring of the same program into several machines constitutes making multiple copies, which is not permitted under the law.
- Use of Databases and Downloading from Remote Databases
  - These sources are often in the form of databases, which are protected by copyright law.
  - There are no exemptions in the law, for libraries or educational institutions, permitting downloading of database information. Due to the fact that there are no exemptions, it would be appropriate to abide by the following guidelines:
    - Carefully review contracts or license agreements and be aware of all conditions between your library or educational institution and the vendor.

- Do not retain extra or archival copies of a downloaded search.
- The material downloaded may not be used to create a derivative work, especially if for financial gain.
- If providing direct access to searches by students or library patrons, they should be informed of the conditions of the database contract they are searching.

## Photocopying

You may reproduce single copies of the following:

A chapter of a book.

An article from a periodical or newspaper.

A short story, short essay or short poem, whether or not from a collective work.

A chart, graph, diagram, \*cartoon or picture from a book, periodical or newspaper.

\*Note: Copyrighted, syndicated cartoon characters are not permitted to be copied.

You may reproduce multiple copies of the following:

A complete poem if less than 250 words and if printed on not more than two pages.

An excerpt from a long poem, but not to exceed 250 words.

A complete article, story or essay of less than 2,500 words or an excerpt, not more than 1,000 words, from a larger printed work not to exceed 10% of the whole, whichever of the preceding is less.

One chart, graph, diagram \*cartoon or picture per book or periodical issue.

Special works combining prose, poetry and illustrations, but limited to no more than 10% of the total.

All preceding must bear the copyright notice.

\*Note: Copyrighted, syndicated cartoon characters may not be reproduced.

Limits to the preceding:

Copying is made for one course only.

One work from a single author.

No more than three authors from a collective work.

No more than 9 instances of such multiple copying in one class term.

Copying shall not be used to create or replace or substitute for anthologies or collective works.

Copying of "consumable" works, i.e., workbooks, exercises, standardized tests, test booklets and answer sheets is absolutely prohibited.

Same item not reproduced term to term.

No charge made to students beyond actual photocopying.

Facsimile Reproduction (Fax Copying)

A facsimile or FAX machine is a copy machine and is subject to the same copyright considerations as any other copier. The same rules of classroom, library photocopying and interlibrary loan apply.

Public Performance

Public performance in a classroom

The performance is allowed only for face-to-face teaching activities directly related to instruction.

Performances of the defined works must only be by the instructor or pupils.

Exemption only applies to performances related to teaching activities which involve systematic instruction.

The performance must take place in a classroom or similar place devoted to instruction.

The exemption would not apply to "performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class."

Music

Permissible uses

Emergency copying to replace purchased copies which, for any reasons, are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

For academic purposes, other than a performance, multiple copies of excerpts of works

may be made, provided 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.

### 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 and like material.

Copying for the purpose of a performance, except as noted under Permissible Uses.

Copying for the purpose of substituting for the purchase of music, except as noted under Permissible Uses.

Copying without inclusion of the copyright notice which appears on the printed copy.

### Other Considerations

Recording of a band or concert and selling copies is not considered fair use.

Festival organizers or organizations sponsoring a music festival are responsible for making the mechanical royalty payments for any recordings that are made of copyrighted music.

Any arrangement of a copyrighted musical work, without the permission of the copyright owner, is considered a copyright infringement.

You may edit or simplify printed copies (of music) which have been purchased, but in no case may one write a derivation or arrangement of a copyrighted work and then photocopy (reproduce) it for classroom use.

## Audiovisual Works

### Permissible Uses

Creating a series of slides or overhead transparencies from multiple sources, such as magazines, books, encyclopedias, etc., as long as one doesn't exceed one photograph, drawing, chart or diagram per source.

Creating a single overhead transparency from a single page of a consumable workbook, not exceeding the one page from the entire book.

Salvaging useful frames from a damaged filmstrip in order to create a slide set, as long as the slides are maintained in the same chronological order as the original filmstrip, minus the damaged frames.

Using an opaque projector to enlarge a map of an area for tracing in a larger scale, as long as the map is not reproduced with those parts that make it copyrightable; i.e., color scheme, shading, how cities, buildings are symbolized, etc.

Duplicating visual or audio materials from a non-dramatic literary work in order to provide materials for the deaf or the blind. In addition, these and other copyrighted materials may be legally transmitted to blind or deaf individuals via cable or closed circuit systems.

### Prohibitions

No duplication of audio-cassette tapes for archival, backup, or for multiple uses unless reproduction rights were given at the time of purchase.

No reproduction of musical works (i.e., records, tapes, CDs) or converted from one form to another, such as a record to a tape unless such rights have been acquired from the copyright holder.

No reproduction of "ditto masters" produced commercially as individual items, in sets, or as part of a multi-media kit if they are available for sale separately. (Once the master is used up in the ditto process, it may not be photocopied or reproduced in any other manner unless permission is obtained.)

No reproduction of any audio-visual work in its entirety, except for off-air video taping as per the guidelines found in the video section of this regulation.

No conversion of one media format into another, i.e., 16 mm film to videotape, with the exception that copies of old motion picture films, subject to deterioration, (mainly pre-1942) may be made for archival preservation.

No narrating entire stories onto audio tape.

## Video

## Off-air Videotaping

Institutional taping - in terms of off-air videotaping for educational use, there exists a set of quasi-legal guidelines that were never adopted into law, but have tacitly become accepted as the "official" guideline for education. They were developed by a subcommittee of Congress, chaired by Representative Kastenmeir, which was attempting to deal with the problem of providing legitimate access to programs for instructional use. According to these guidelines, an educational institution may tape programs off-air if they adhere to the following conditions: (Italicized information in each section has been added to provide clarification and examples, but are not part of the guidelines.):

The privilege of off-air taping applies only to non-profit, educational institutions. Programs taped must be used directly for instruction and not for entertainment.

A broadcast program may be recorded off-air simultaneously with broadcast transmission (including cable transmission) and retained by the educational institution for a period not to exceed 45 calendar days after the date of recording. The program then must be erased.

Even though the programs may be held 45 days, they may only be used and repeated once with each class by an individual teacher during the first ten (10) consecutive school days during the forty-five (45) day calendar retention period. They may not be used with students after that time.

After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the 45 day retention period only for teacher evaluation purposes and may not be used for student exhibition or any other non-evaluation purpose without authorization.

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.

The program must be recorded in its entirety, including copyright notice, and may not be altered.

Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

## Taping from Cable and Satellite

Off-air taping, under the institutional guidelines, permits the taping of "broadcast programs" which are defined as those programs transmitted by television stations without charge to the general public. Only those cable programs also available on-air in your area may be taped. (Pay services such as out-of-town stations, HBO and Cinemax do not fall under these guidelines.)

According to present interpretation, satellite transmissions would fall under the same criteria as that for cable. Educational agencies that desire to record and/or distribute satellite signals via closed circuit systems should obtain a license to do so from the appropriate agency providing the programming.

It should be noted that a number of instructional programs, including inservice, are being provided via satellite. In many instances, fees are associated with such programs. The taping and use of these programs, without payment of the appropriate fee, would be illegal.

#### Using Copyrighted Videocassettes With the "Home Use Only" Warning Label

Purchasing - if an educational institution purchases a copy of a videocassette bearing the warning label FOR HOME USE ONLY, it is permissible to use the tape for face-to-face instruction with students as per Section 110(1) of the Copyright Law. The key is that the tape is incorporated as part of the systematic teaching activities of the program in which it is being used.

Renting - the rental of a videocassette bearing the FOR HOME USE ONLY warning notice and intended for instructional use would also fall under the Section 110(1) performance exemption of the Copyright Act.

#### Instructional Broadcasting

Transmission/Performance - as a specific exemption to the law, transmitted performances of nondramatic literary and musical works and displays of works would be permitted if:

The performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution.

The performance or display is directly related and of material assistance to the teaching content of the transmission.

The transmission is made primarily for:

Reception in classrooms or similar places normally devoted to instruction.

Reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places devoted to instruction.

Reception by officers or employees of governmental bodies as part of their official duties or employment.

#### Computer Software and Applications

##### Duplication

The owner of a copy of a computer program is not infringing on the copyright by making or

authorizing the making of another copy or adaptation of that program if the following criteria are met:

That the new copy or adaptation is created in order to be able to use the program in conjunction with the machine and is used in no other manner.

That the new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any copies prepared or adapted may not be leased, sold or otherwise transferred without the authorization of the copyright owner.

Transferring Programs to Hard Disk – the hard-disk versions could become the working copies with the original, purchased floppies being designated archival copies.

#### Networking and Multiple Machine Loading

Once transferred through a network, multiple copies are created, even if they are transient in nature.

The transferring of the same program into several machines constitutes making multiple copies, which is not permitted under the law.

#### Use of Databases

##### Downloading From Remote Databases

These sources are often in the form of databases, which are protected by copyright law.

There are no exemptions in the law, for libraries or educational institutions, permitting downloading of database information. Due to the fact that there are no exemptions, it would be appropriate to abide by the following guidelines:

Carefully review contracts or license agreements and be aware of all conditions between your library or educational institution and the vendor.

Do not retain extra or archival copies of a downloaded search.

The material downloaded may not be used to create a derivative work, especially if for financial gain.

If providing direct access to searches by students or library patrons, they should be informed of the conditions of the database contract they are searching.

Creation and Distribution of Local Databases – schools are beginning to develop computer databases consisting of original source materials. These are then distributed via computer terminals to various sites. The following copyright infringements should be considered

during this process:

Reproduction of the author's work.

Distribution of the author's work.

Creation of a derivative work based on the author's work.

Public display of the author's work.

New Information Technologies

CD-ROM Technology

Faculty and students may copy sections as per the guidelines for the reproduction of printed materials for the purpose of research and teaching.

The purchase of a network license for each CD-ROM product placed on a network would be required.

Laserdisc Technology

Laserdiscs have many of the characteristics of videocassettes, and both are considered audiovisual mediums protected under copyright.

Similar to the general video medium, if a small portion was copied from a laserdisc, and was used as part of a larger work in which the copied portion constituted a very small part and the copied portion was not of a highly original nature, the application might fall under fair use.

Obtaining Copyright Permission

Since the copyright owner has the right to duplicate, create a derivative work, distribute, perform and publicly display his/her copyrighted work, and even though there are a number of prohibitions against specific uses of materials by others, the copyright owner has the right to grant permission for uses not automatically allowed under the Copyright Act. This permission is obtained under one or more of the following procedures/processes.

Writing for Permission – an individual or an institution may write directly to the author or publisher/producer and request permission to do whatever is desired in relation to the copyrighted material.

A sample form for writing for copyright permission may be found in appendix C of the guide, Copyright: A Guide to Information and Resources, available from District Media Services or any school library media center.

The fact that an item is no longer in print or available does not negate the copyright protection for the author that exists with the material.

Purchase Agreements— if prior to purchasing an item, an institution desires to have certain privileges or rights, such as closed circuit transmission of videotapes or films or the right to duplicate computer software for a laboratory setting, it would be appropriate to negotiate such rights into the purchase agreement or contract.

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LEGAL REFERENCE(S): PL 94-533; The Copyright Revision Act of 1976; Title 17, United States Code

CROSS REFERENCE(S): 4675