

Personnel

Administrative Procedure - Copyright Compliance

These guidelines help staff members determine if they may use non-original work freely or whether permission is needed to use or copy it. Whenever a staff member is uncertain, has questions, or needs permission from a copyright-owner to use or copy a work, he or she should contact the Executive Director or designated copyright compliance officer.

1. Is the work copyright protected? *A “no” means you may use the work freely; a “yes” or uncertain answer means you should proceed with the second query.*
 - a. No, if it is in the public domain. (See Appendix A)
 - b. No, if it is a U.S. Government publication.
 - c. No, if it is an idea or method described in copyrighted work.
 - d. The presence of a copyright notice is not determinative.
 - e. Yes, almost all other works.
2. Do you want to exercise one of the copyright owner’s exclusive rights? *A “yes” or uncertain answer means you should proceed with the third query.*
 - a. Yes, if you plan to copy the work.
 - b. Yes, if you plan to use the work as the basis for a new work.
 - c. Yes, if you plan to electronically distribute or publish copies.
 - d. Yes, if you plan to perform music, prose, poetry, a drama, or play a video or audiotape or a CD-ROM.
 - e. Yes, if the plan is to publicly display the work.
3. Does your planned use of the work require the copyright owner’s permission? *A “no” means you may use the work, provided that any copies contain the copyright notice as it appears in the original work; a “yes” or uncertain answer means you should contact the Executive Director or designated copyright compliance officer.*
 - a. No, if your planned use of printed work is within the “fair use” exception.

Staff members should follow the Guidelines for Classroom Copying of Books and Periodicals (Appendix B). The application of these Guidelines to software is problematic; thus, copying software in lieu of purchasing it is prohibited, unless authorized by these procedures or by the Executive Director or designated copyright compliance officer.
 - b. No, if your planned use of the work is within the “library’s special rules” exception.
 - A library may make a single copy (containing the notice of copyright present on the original work) for the purpose of archiving lost, stolen, damaged, or deteriorating works.
 - A library may make a single copy (containing the notice of copyright present on the original work) for a student or staff member at no more than the actual cost of photocopying, provided that the library finds that the copyrighted work cannot be obtained elsewhere at a fair price.
 - c. No, if your planned use of the work is within the “educational performances and displays” exception.

Performances by teachers or students are permitted as part of a teaching activity in a classroom or instructional setting. All other performances require permission from the copyright owner. (See Appendix C)

- d. No, if you plan to use it in an overhead or opaque projector for instructional purposes.
- e. No, if you plan to copy and use music for academic purposes, other than performance.
- f. Yes, notwithstanding the above, if you plan to create anthologies, compilations, or collective works.
- g. Yes, notwithstanding the above, if copies will be "consumed" during the course. "Consumable" works include: workbooks, exercises, standardized tests, test booklets, and answer sheets.
- h. Yes, notwithstanding the above, if you plan to substitute copies for the purchase of the work; likewise, if you yearly copy the same item.
- i. You must receive permission from the Executive Director or designated copyright compliance officer before showing the off-air recording of television programs, video rentals, or videos purchased for home use. (See Appendix D, off-air recordings) You must follow any applicable license agreements.
- j. You must receive permission from the Executive Director or designated copyright compliance officer before using any non-NDSEC-owned software and/or CD-ROM products in NDSEC-owned equipment. No one may install or download any program on NDSEC-owned equipment without the Executive Director or designee's permission.
- k. You must follow licensing agreements applicable to NDSEC-owned software and CD-ROM products.
 - Licensing agreements with the manufacturer and vendor shall be followed.
 - Staff members shall take reasonable precautions to prevent copying or the use of unauthorized copies on school equipment, to avoid the installation of privately purchased software on school equipment, and to avoid the use of single copy software or CD-ROM products across a network with multiple users unless the applicable license agreement permits.
 - A back-up copy shall be purchased for use as a replacement when a program is lost or damaged. If the vendor is not able to supply such, the NDSEC shall make a back-up program in accordance with the terms of the applicable licensing agreement.

Appendix A: Public Domain

Created 1-1-78 or after

Work that is fixed in a tangible medium of expression is in public domain after the author's life plus 70 years (or, if the work has corporate authorship, the shorter of 95 years from publication, or 120 years after creation).

Published before 1923

Currently in public domain.

Published from 1923 - 1963	Material that was published with a copyright notice remained protected for 28 years after its first publication; copyright could be renewed for up to 67 years. If not so renewed, now in public domain.
Published from 1964 - 1977	Material that was published with a copyright notice remains protected for 28 years after its first publication; copyright protection was automatically extended for additional 67 years.
Created before 1-1-78, but not published	Work that was created, but not published, during this time is in the public domain after author's life plus 70 years or 12-31-2002, whichever is greater.
Created before 1-1-78, but published between then and 12-31-2002	Work that was created and published during this time is in the public domain after the author's life plus 70 years or 12-31-2047, whichever is greater.

Appendix B: Guidelines for Classroom Copying of Books and Periodicals

The following guidelines state the minimum standards of educational fair use under Section 107 of The Copyright Act.

I. Single Copying for Teachers

A single copy may be made of any of the following or any part thereof by or for any faculty or staff member at his or her individual request:

- 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 student in a course) may be made by or for the faculty giving the course for classroom use or discussion, provided that:

- A. The copying meets the brevity and spontaneity tests as defined below; and,
- B. Meets the cumulative effect test as defined below; and,
- C. Each copy includes a notice of copyright.

Definitions

A. 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: (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.

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.
- 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% of the words found in the text thereof, may be reproduced.

B. Spontaneity

- i) The copying is at the instance and inspiration of the individual teacher, and
- ii) 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.

C. Cumulative Effect

- i) The copying of the material is for only one course in the school in which the copies are made.
- ii) 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.
- iii) 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.

III. Prohibitions on "Single Copying for Teachers" and "Multiple Copies for Classroom Use" (I and II above)

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying may not be used to create or to replace or substitute for anthologies, compilations or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts therefrom are accumulated or are 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, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - 1. substitute for the purchase of books, publisher's reprints or periodicals;
 - 2. be directed by higher authority; or
 - 3. be repeated with respect to the same item by the same teacher from term to term.

- D. No charge may be made to the student beyond the actual cost of the photocopying.

Appendix C: Performance Rules

The following do not violate copyright laws:

1. 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 under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
2. performance of a non-dramatic literary or musical work or display of a work, by or in the course of a transmission, if - (A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and (B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and (C) the transmission is made primarily for - (i) reception in classrooms or similar places normally devoted to instruction, or (ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or (iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;
3. performance of a non-dramatic literary or musical work or of a dramatic-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;
4. performance of a non-dramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if - (A) there is no direct or indirect admission charge; or (B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions; (i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and (ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and (iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;
5. communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless - (A) a direct charge is made to see or hear the transmission; or (B) the transmission thus received is further transmitted to the public;

6. performance of a non-dramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;
7. performance of a non-dramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;
8. performance of a non-dramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio sub-carrier authorization (as defined in 47 CFR 73.293-73.295 and 73.593-73.595); or (iv) a cable system;
9. performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio sub-carrier authorization referred to in clause (8)(iii), Provided, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization; and
10. notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a non-dramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

Appendix D: Off-Air Recordings

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
2. 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 calendar days after 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.
3. 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) day 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.