

CLASSIFICATION: Administration

ADOPTED: 12/8/93

REVISED: 5/10/95

SUBJECT: Copying and Use of Copyrighted Material

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USE OF COPYRIGHTED MATERIALS (PRINT AND NONPRINT)

- A. When making a reproduction of someone else's work, an employee of the County Superintendent of Schools shall first ascertain whether the copying is permitted by law based on the guidelines below. If the copying is not permitted as a "fair use" pursuant to the guidelines set forth below, the employee of the County Superintendent of Schools shall obtain written permission to reproduce the material from the copyright holder(s) in the manner described below.
- B. Requests for copyright permission shall include the following information:
1. Title, author(s), editor(s), or publisher, producer(s), or distributor.
 2. Edition, copyright and/or production year.
 3. Exact amount of material to be used (i.e., chapter, lines, running time, scenes, etc.).
 4. Reference to the initial contact individual, by name, in the letter if the initial contact was made by phone.
 5. Nature of the use (i.e., how many times, when and with whom the material will be used).
 6. Number of copies to be made.
 7. How the material will be reproduced.
- C. Written permission from the copyright holder shall be retained by the employee and appropriate unit (i.e., Graphic Communications, ITV, Tech Consortium, Research and Reference Center, etc.) for a minimum of three (3) years after the actual last fiscal year of permissible reproduction of the copyrighted materials.

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COPYRIGHT WARNINGS REQUIRED

Notices of possible infringement of copyright law must be displayed at places where orders for copying are accepted, on printed forms for ordering copies, and at stations where unsupervised copying equipment is located.

A. Display warning of copyright where orders for copies are accepted:

Display warning shall consist of a verbatim reproduction of the following notice in 18- or 24-point type on 8-1/2 inch by 11 inch heavy paper:

**NOTICE
WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

- B. Notice on photocopy order forms: Above wording also must appear on photocopy order forms near patron's signature. Type size shall be no smaller than 8 points.
- C. Notice on or near unsupervised equipment: A 6 inch x 3 inch notice must be displayed near, or on unsupervised copying equipment. Notice shall include:

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"NOTICE

The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies of copyrighted materials. The person using this equipment is personally liable for any infringement."

- D. Notice on copies of copyrighted materials: The following must be printed, stamped, or reproduced on first page of each item copied.

"NOTICE

**This material may be protected by
copyright law. (Title 17, U.S. Code)"**

GUIDELINES

The following copyright guidelines specify which uses are permitted as "fair use" and which are prohibited: printed material; sheet and recorded music; audio recordings - records, disks and tapes; films, filmstrips, overhead transparencies, or slide programs; off-air taping (radio and television); rental, purchase and use of videotape; computer software; works by libraries, educational performances and displays; and emerging technologies.

A. Printed Materials

1.1 Permitted Uses - An employee, for his/her scholarly research, for use in teaching, or preparation to teach a class, may make single copies of:

- a. A chapter of a book.
- b. An article from a magazine or newspaper.
- c. A short story, short essay, or short poem whether or not from a collected work.
- d. A chart, graph, diagram, drawing, cartoon, or a picture from a book, magazine or newspaper.

1.2 Permitted Uses - An employee may make multiple copies for classroom use (not to exceed one copy per student in a course) of:

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

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- b. An excerpt from a longer poem, but not to exceed 250 words.
- c. A complete article, story or essay of less than 2,500 words.
- d. An excerpt from a larger printed work not to exceed ten percent of the whole or 1,000 words, whichever is less.
- e. One chart, graph, diagram, cartoon or picture per book or magazine issue.

NOTE: ALL PERMITTED COPYING MUST BEAR AN APPROPRIATE REFERENCE (i.e., AUTHOR, TITLE, DATE, SOURCE, ETC.)

The copying must be at the "instance and inspiration" of the employee; and the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness must be "so close in time that it would be unreasonable to expect a timely reply to a request for permission."

- 2. Prohibited Uses - An employee may not:
 - a. Copy more than one work or two excerpts from a single author during one class term.
 - b. Copy more than three works from a collective work or periodical volume during one class term.
 - c. Reproduce more than nine sets of multiple copies for distribution to students for one course during one class term.
 - d. Copy to create or replace or substitute for anthologies or collective works.
 - e. Copy "consumable" works such as workbooks, standardized tests, answer sheets, etc.
 - f. Copy the same work from term to term.
 - g. Copy the same material for more than one course being offered in the school.

B. Sheet and Recorded Music

- 1. Permitted Uses - An employee for educational purposes may duplicate:
 - a. Emergency copies to replace purchased copies unavailable for an imminent performance, provided purchased replacement copies are substituted in due course.
 - b. Multiple copies (one per student) of excerpts not constituting an entire performance unit (e.g., a section, movement or aria) or more than ten percent of the total work for academic purposes other than performances.

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- c. Edited or simplified purchased sheet music provided the character of the work is not distorted or lyrics added or altered.
 - d. A single copy of an entire performable unit if out of print or unavailable except in large works solely for scholarly research or in preparation to teach a class and not for performance.
 - e. A single copy of a recorded performance by students to be retained by the institution or employee for evaluation or rehearsal purposes.
 - f. A single copy of recordings of copyrighted music owned by the institution for constructing aural exercises or examinations and retained for that purpose.
2. Prohibited Uses - An employee may not duplicate:
- a. In order to replace or substitute for anthologies, compilations or collections.
 - b. From works intended to be "consumable," such as workbooks, exercises, standardized tests, and answer sheets.
 - c. For purposes of performance except as noted in an emergency.
 - d. To substitute for purchase of music.
 - e. Without inclusion of copyright notice on the copy.
- C. Audio Recordings - Records, Disks and Tapes
1. Permitted Uses - An employee for educational purposes may make:
- a. A single copy of a portion of a sound recording for a student for academic purposes other than performance, provided that the portion does not constitute a performable unit and in no case more than 10 percent of the whole work. This copy can only be used in the educational context in which it was made and may not be sold or performed for profit.
 - b. A single copy of recordings of performances by students for evaluation or rehearsal purposes and may be retained by the educational institution or employees.
 - c. A single copy of the entire sound recording of copyrighted music or a portion thereof from sound recordings owned by an educational institution or an employee for the purposes of constructing aural exercises or examinations and may be retained by the educational institution or employee.
2. Prohibited Uses - An employee may not:
- a. Duplicate audio recordings unless reproduction rights were given at time of purchase.

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- b. Reproduce music works or convert to another format (e.g., record to tape, etc.) unless written permission is secured.

NOTE: ANSWERS TO QUESTIONS PERTAINING TO MAKING MULTIPLE COPIES OF SOUND RECORDINGS SHOULD BE OBTAINED IN WRITING FROM THE COPYRIGHT HOLDER.

D. Films, Videotapes, Filmstrips, Overhead Transparencies or Slide Programs

1. Permitted Uses - An employee for educational purposes may:
 - a. Allow a student to make a single copy of a small portion of a copyrighted film, videotape, or filmstrip for legitimate scholarly or research purposes if the material is owned by the school which the student is attending.
 - b. Duplicate a single copy of a small portion of a film or filmstrip for scholarly or teaching purposes.
 - c. Create a slide or overhead transparency series from multiple sources as long as creation does not exceed ten percent of photographs in one source (book, magazine, filmstrip, etc.) unless the source forbids photographic reproduction.
 - d. Create a single overhead transparency from a single page of a "consumable" workbook.
 - e. Excerpt sections of a film to be included in a local videotape (not to be shown over cable or broadcast) if excerpting does not exceed ten percent of the total or the "essence" of the work.
 - f. Reproduce selected slides from a series if reproduction does not exceed ten percent of total nor excerpt "the essence" of the original work.
2. Prohibited Uses - An employee may not:
 - a. Reproduce an audiovisual work in its entirety.
 - b. Convert one media format to another (e.g., film to videotape) unless written permission is secured.
 - c. Copy any portion of a film, videotape, or filmstrip sent to the school for preview or rent, or owned by another school or institution, without the express written permission of the copyright holder.

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NOTE: THE COPYRIGHT OF A FILM/VIDEO GOVERNS THE PERFORMANCE (SHOWING) AS WELL AS THE COPYING OF IT. IT IS PERMISSIBLE TO SHOW A FILM TO STUDENTS USING CLOSED-CIRCUIT TELEVISION IF THE SYSTEM IS CONFINED TO ONE BUILDING. SHOWING A FILM/VIDEO VIA CLOSED-CIRCUIT TELEVISION OUTSIDE THE BUILDING IS NOT PERMITTED.

E. Radio - Off-Air Taping

1. Permitted Uses - An employee may:
 - a. Allow a student to make a single copy of a small portion of a copyrighted radio program for legitimate scholarly or research purposes. Such a copy may not be sold or performed for profit.
 - b. Copy broadcasts by national public radio for use by employees of the County Superintendent of Schools which may be retained for an indefinite period for educational purposes.
 - c. Copy radio broadcasts consistent with "fair use" guidelines established for off-air videotaping for use in face-to-face instruction.
2. Prohibited Uses - An employee may not:

Copy broadcasts from commercial radio, except for portions of copyrighted musical selections. (See Audio Recordings - Records, Disks, and Tapes.) The teacher is governed by the same copyright laws that apply to off-air taping of commercial television. There is no special provision allowing libraries to tape radio news programs. (See Television - Off-Air Taping.)

F. Television - Off-Air Taping

The primary purpose of the federal Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes is to set forth how the "fair use" provisions apply to use of videotape recording off-air in face-to-face instruction within a specified time period. These guidelines also enable staff to preview instructionally related materials for possible acquisition through purchase, lease, rental, or free-loan agreement by the County Superintendent of Schools.

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1. Permitted Uses - An employee for educational purposes may:
 - a. Record a broadcast program off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retain for a period not to exceed the first 45 consecutive calendar days after the date of the broadcast. Upon conclusion of the retention period all off-air recordings shall be erased or destroyed immediately. Broadcast programs are television programs transmitted for reception by the general public without charge. Individuals who wish to retain programs beyond the 45 day period need to obtain written approval of appropriate copyright holders.
 - b. Use off-air recordings once for each class in the course of relevant teaching activities and repeat once only when instructional reinforcement is necessary. These recordings may be shown 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 10 consecutive school days in the 45 calendar day retention period.
 - c. Request that off-air recording be made for "fair use" at the request of, and for use by, an employee for educational purposes. An off-air recording may not be recorded in anticipation of an employee's request. A limited number of additional 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. 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. After the first 10 consecutive days, use off-air recordings to the end of the 45 calendar day retention period for evaluation purposes only (i.e., to determine if the broadcast should be purchased for the curriculum). The program may not be used for student exhibition or any other nonevaluation purpose without written authorization.
 - e. Use authorized copies of off-air recordings provided that the copyright notice is included on the broadcast programs as recorded.

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- f. Request that a library record and commercial TV news programs be permanently retained for research purposes. (This excludes documentaries, magazine-format, and public affairs broadcasts.) News programs are excluded from the 10 day/45 day use and retention period.

2. Prohibited Uses - An employee may not:

- a. Tape off-air programs in anticipation of a teacher's request.
- b. Request that a broadcast program be recorded off-air more than once for the same employee, regardless of the number of times the program may be broadcast.
- c. Use the recording for instruction after the 10 consecutive school day use period.
- d. Hold the recording for weeks or indefinitely because:
 - (1) Units needing the program concepts are not taught within the 10 day use period.
 - (2) An interruption or technical problems delayed its use.
 - (3) Another teacher wishes to use it, or any other supposed "legitimate" education reason.
- e. Record programs off-air without written permission from the author/producer/distributor when a special notice is provided specifically prohibiting reproduction of any kind.
- f. Alter off-air programs from their original content. Broadcast recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

NOTE: THE COPYING OR USE OF SUBSCRIPTION PROGRAMS TRANSMITTED VIA SUBSCRIPTION TELEVISION CABLE SERVICES, SUCH AS HBO OR SHOWTIME, IS ILLEGAL. SUCH PROGRAMS ARE LICENSED FOR PRIVATE/HOME USE ONLY AND MAY NOT BE USED IN PUBLIC SCHOOLS. "PAY" PROGRAMS RECEIVED VIA SATELLITE DISH ARE SUBJECT TO THESE GUIDELINES.

REGIONAL PROVIDERS OF INSTRUCTIONAL PROGRAMMING IN CALIFORNIA PURCHASE OFF-AIR DUPLICATION RIGHTS ON BEHALF OF THE SCHOOLS THEY SERVE. REGIONAL ITV AGENCIES SHOULD BE CONSULTED FOR CLARIFICATION IN THE USE OF THESE PROGRAMS.

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G. Rental, Purchase and Use of Videotape

1. Permitted Uses - Unless precluded by County Board of Education policy, an employee may:
 - a. Use purchased or rented videotapes (i.e., feature films) as part of instruction. Such use shall be for face-to-face instruction and must take place in a classroom or similar area devoted to instruction.
 - b. Use only lawfully-made tapes.
2. Prohibited Uses - An employee may not:
 - a. Use rented or purchased videotapes where written notice or a written contract specifically prohibits such use in a classroom or face-to-face teaching situation.
 - b. Use purchased or rented videotapes for assemblies, fund raising, recreation, entertainment, reward or other applications outside the scope of face-to-face instruction.
 - c. Show videotapes to non-student general audiences.

H. Controls

Office units are expected to establish appropriate control procedures to maintain the integrity of the above described television copyright and guidelines.

I. Programs Recorded at Home by An Employee

1. Permitted Uses - An employee may:
Record programs at home for use in a particular classroom provided the programs are recorded and used in compliance with the Guidelines for Television Off-Air Taping.
2. Prohibited Uses - An employee may not:
Utilize programs in classrooms that have been recorded and retained at home without written permission of the copyright holder.

J. Programs Broadcast Over San Diego County Office of Education Instructional Television Station (ITFS and Cable TV)

1. Permitted Uses - An employee for educational purposes may:
Record, hold and use programs listed in the ITV catalog for the duration of the school year in which broadcasts occurred.

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2. Prohibited Uses - An employee may not:
Continue to hold copies of programs listed in the ITV catalog if ITV ceases to purchase the yearly duplication rights. All such videotapes must be erased.

K. Computer Software

The County Superintendent of Schools or designee is the only individual who may sign license agreements for computer software. Each office unit and school site should have a copy of the license agreement for all software used. Each unit shall set up procedures to ensure that the use of software does not exceed provisions of applicable license agreements. It is the responsibility of each software user to know the conditions under which the software may be used.

1. Permitted Uses - An employee may make:
 - a. One copy of an original computer program for the purpose of maintaining the availability of the program in the event it is damaged during use. Either the copy or the original may be retained in archives. Only one, either the original or the copy, may be used at any one time.
 - b. A copy of a program as an essential step in the utilization of the computer program as long as it is used in conjunction with the machine and in no other manner.
 - c. A new copy from the archival program in the event the program in use is damaged or destroyed.
 - d. An additional copy as authorized by the software license agreement.
2. Prohibited Uses - An employee may not:
 - a. Load the contents of one disk into multiple computers for use at the same time in the absence of a license permitting the user to do so.
 - b. Load the contents of one disk into local network or disk sharing systems in the absence of a license permitting the user to do so.
 - c. Make or use illegal copies of copyrighted software on school or office equipment.
 - d. Allow any employee or student to surreptitiously or illegally duplicate computer software or access any data base or electronic bulletin board.

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NOTE: NO EMPLOYEE OF THE COUNTY SUPERINTENDENT OF SCHOOLS SHALL SURREPTITIOUSLY OR ILLEGALLY ACCESS ANY DATA BASE OR ELECTRONIC BULLETIN BOARD USING SCHOOL OR OFFICE EQUIPMENT.

L. Reproduction of Works by Libraries

The Copyright Act imposes extensive restrictions on reproduction of works by school libraries. Systematic duplication of multiple copies is forbidden by law with the following exceptions:

1. Permitted Uses - A librarian may:
 - a. Arrange for inter-library loans of photocopies of works requested by another library, provided that copying is not done in such aggregate quantities as to substitute for subscriptions to, or purchase of, a work (not exceeding five copies in a calendar year).
 - b. Make not more than five copies of an article or articles published in a given periodical within the last five years upon request of another library.
 - c. Make single copies of articles or records or excerpts of longer works for a student making a request, provided the articles become the property of the student for private study, scholarship or research.
 - d. Make copies of unpublished works for preservation, published works to replace damaged copies if an unused replacement cannot be obtained at a fair price, and out-of-print works which cannot be obtained at a fair price.
 - e. Make a limited number of off-air tape recordings of daily TV news broadcasts for limited distribution to scholars and researchers, for research purposes.

2. Prohibited Uses - A librarian may not:
 - a. Make copies for students if there is reason to suspect that the students have been instructed to obtain copies individually.

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- b. Make copies of musical works, pictorial, graphic, or sculptural works, motion pictures, or other audiovisual works (except daily news programs) unless it is for the purpose of preservation or security or in accordance with the provisions dealing with "fair use."
- c. Copy without including notice of copyright. (See section D, Copyright Warnings Required.)

NOTE: TO AVOID LIABILITY FOR COPYRIGHT INFRINGEMENT ON THE PART OF THE LIBRARY OR AN EMPLOYEE AS A RESULT OF UNSUPERVISED DUPLICATING, LIBRARIES MUST DISPLAY NOTICES TO THE EFFECT THAT MAKING A COPY MAY BE SUBJECT TO THE COPYRIGHT LAW. (SEE SECTION C, COPYRIGHT WARNINGS REQUIRED.)

Except as provided in L 1 a and b, the rights of reproduction and distribution by a Library extend only to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions.

M. Educational Performances and Displays

Use of copyrighted materials for performance and display outside the realm of face-to-face teaching activities requires contractual arrangements and written permission from the copyright holder.

The copyright law permits the showing of motion pictures and other audiovisual materials in a classroom within a non-profit educational institution as long as it is part of "face-to-face" teaching activities. The use must be part of the instructional program and cannot be shown for recreation or entertainment. Section 110(1) of the U.S. Copyright Law exempts the classroom use of lawfully manufactured and obtained copy of a motion picture or other audiovisual work from the public performance rights reserved to the copyright holder.

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N. Emerging Technologies

Newer technologies and the potential for manipulation and merging of the electronic media may result in the creation of new copyrightable forms of expression, the use or copying of which are not delineated in copyright law. These technologies include, but are not limited to, distance learning and satellite transmission, digital video, video disk, CD-ROM, computer interface, on-line data bases/information networks, and other educational interventions. While present and future technologies will free a teacher to respond in real time to the "teachable moment" and collaborate with other educators, the potential for copyright infringement is a serious consideration.

In the absence of clear-cut copyright authority, employees must contact the copyright holder in writing for permission to manipulate or use these technologies in alternative ways. This course of action will assure compliance with the spirit and intent of the copyright law as regards the role of electronic information and its transfer and use.

Policy No.: 2300**Derivation: Former Administrative Regulation No. 2500, Adopted 12/8/93, Renumbered 2300, 5/10/95.****Legal Reference: UNITED STATES CODE, TITLE 17****Copyright Act of 1976, PL 94-553, effective January 1, 1978****Amends Section 117 PL 96-517, effective December 12, 1980****Guidelines for Off-Air Recording of Broadcast Programming for****Educational Purposes (Congressional Record, October 14, 1981)****Legal Opinion Regarding Duplication of Computer Software (5-4694) Legal
Counsel, State Department of Education, September 19, 1988**