

## **COPYRIGHT COMPLIANCE**

### **General Provisions**

It is a copyright violation to use (distribute to an audience) the work of another without permission.

The word "person" in the policy refers to teachers, students, and other Todd County Public School personnel.

Legal or insurance protection of the district shall not be extended to persons who knowingly and intentionally violate copyright laws.

Each school principal shall annually schedule a staff meeting at which time the principal shall review with staff the copyright policy and regulation. Staff shall be informed on the use of copyrighted materials, appropriate records of permission, agreements, licenses and registrations, and copyright warning notices on or near copying equipment.

Permission can be granted by law or by the copyright holder. Acknowledging the work of others whether using their exact words or images they have created, or when paraphrasing, is required. This applies to both published and unpublished materials.

### **Fair Use Doctrine**

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. *Section 107 of the Copyright Act* provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. Section 107 calls for consideration of the following four factors in evaluating a question of fair use:

*1. Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:* Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and character of the use against the other factors below. Additionally, “transformative” uses are more likely to be considered

fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.

*2. Nature of the copyrighted work:* This factor analyzes the degree to which the work that was used relates to copyright's purpose of encouraging creative expression. Thus, using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.

*3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole:* Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.

*4. Effect of the use upon the potential market for or value of the copyrighted work:* Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner's original work. In assessing this factor, courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread.

Under Educational Fair Use, and if done non-repetitively, it is legal for a person to:

- 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 periodical, or newspaper;
  - A short excerpt (up to 10 percent) from a performable unit of music such as a song, movement, or section for academic purposes other than performance.
- Make multiple copies (not to exceed one per pupil) for classroom use of the following:
  - A complete poem if fewer than 250 words and less than two pages;
  - A poetic excerpt if fewer than 250 words;
  - A story, essay, or article if fewer than 2500 words;
  - A prose excerpt from 500 to 1000 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 10 percent of a performable unit of music (song, movement, section) for academic purposes other than performance.

It is a copyright violation for a person, without permission of the copyright holder, to:

- Copy to create anthologies, compilation or collected works, or to replace or substitute for such.
- Copy from works intended to be consumable (e.g. workbooks, exercises, standardized test booklets, and answer sheets).
- Copy to substitute for purchase of books, videos or other audiovisual materials, publishers' reprints, periodicals, music or recordings.
- Require another to make illegal copies as an assigned work responsibility.
- Copy the same item for more than one semester without securing permission.
- Utilize more than nine instances of multiple copying per course, per term. (See legal multiple copies above.)
- Copy more than one short work or two excerpts from one author's works in any one term.
- Copy music, lyrics, or scripts for performance of any kind except for emergencies described in "Multi-Media Materials."
- Copy protected materials without inclusion of a notice of copyright.
- Charge students more than the actual cost of photocopying the authorized copies.

Unpublished materials have greater copyright protection including enhanced penalties. Even under Educational Fair Use, a person may not use unpublished materials without permission.

## **Electronic Materials**

### **1. Computer Software**

There is no "fair use" provision for computer software. The only copies of computer software that can be made under Copyright laws are:

- Backup copy for archival purposes only;
- Copy that a machine makes when written to memory or temporary files when executing the software.

When the license to use software has expired or been transferred, all copies should be destroyed. In addition to copyright most software is subject to conditions contained in licensing agreements. Such conditions shall be respected. Shareware authorizes limited use of a program for evaluation purposes only. Shareware shall not be used beyond the evaluation period without payment. Open source software is either

published domain software or free for use as permitted by the author. It will always be so marked. If in doubt it is not open source.

Illegal copies of copyrighted programs may not be made, installed, or used on District equipment.

Only the Superintendent or designee may sign District software license agreements. The administrator of each location is responsible for establishing practices which will enforce this directive at the school level.

District or school licensed software may NOT be installed on personal electronic devices.

## **2. Internet**

For classroom use the same rules apply to materials derived from the Internet as derived from other sources. Persons shall not copy entire web sites for classroom use without permission of Copyright holder. Persons shall also not copy entire web sites for classroom use as derived from other sources.

In creating web sites, be aware that placing material on a web site constitutes publication. Do not publish the work of others without permission. This includes the use of copyrighted images. Material obtained from other websites should include a link to that site. Any links to another web site should clearly identify the provider. Failure to do so constitutes plagiarism.

Do not place on a web site student work which contains derived material without the permission of the copyright holder.

Always cite the source for any published material.

## **3. Multi-Media Materials: Non-Print Material Obtained from Outside Sources**

Non-Print materials, whether owned, rented, or licensed, may be copyrighted. Copyrighted materials may not be transferred to a different format or duplicated in total or in part without obtaining the written permission of the copyright holder and paying any required fees for copyright release. Un-authorized admission charges for viewing are prohibited.

Renting, purchasing, or streaming a video or other digital content has the potential for copyright infringement. On most video and digital content obtained from commercial sources, "FOR HOME USE ONLY" is clearly stated. "HOME USE ONLY" means:

- a legally purchased VHS or DVD may only be circulated to patrons who will view the video in their own homes;
- these videos may also be used in face-to-face classroom settings where a teacher is present and the subject of the video correlates with the curriculum, according to the Educational Fair Use clauses of copyright law. However, for

rented or privately licensed videos, such use may violate contract law in the form of Terms of Service or other agreements made with the video provider. This practice is discouraged.

Showing, in their entirety, full-length feature films to students, parents, or the public requires a public performance license.

It is legal for a person to:

- Make a single recording of student performances for evaluation, rehearsal, or archival purposes;
- Make a single recording of oral exercises or examination questions using recorded copyrighted materials;
- Make an emergency replacement copy to substitute for a purchased copy that is not available for an imminent performance; provided purchased replacement copies are substituted in due course.

Educational Fair Use does not necessarily allow showing of copyrighted audiovisual material in the classroom. For more information on the use of videos and audiovisual materials, please refer to the APS Procedural Directive on the Use of Videos and Films.

#### **4. Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes**

The following guidelines reflect legal application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. The guidelines were developed to apply only to off air recordings by non-profit educational institutions.

A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retained by a non-profit educational institution for less than a year. All off-air recordings must be erased or destroyed within a year. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

Off-air recordings shall not be used repetitively.

Off-air recordings may be made only at the request of and used by individuals, 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 person, regardless of the number of times the program may be broadcast.

Certain programs grant permission expressly to educational institutions for their use beyond these limitations. Any use of such materials shall comply with permitting conditions.

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