

Esko Public Schools

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Adopted: 2005

428 (prev. 427) COPYRIGHT POLICY

COPYRIGHT COMPLIANCE

INSTRUCTION

The School District recognizes that federal law makes it illegal to duplicate copyrighted materials without authorization of the holder of the copyright, except for certain exempt purposes. Severe penalties may be imposed for unauthorized copying or using of audio visual or printed materials and computer software, unless the copying or using conforms to the "fair use" doctrine.

Under the "fair use" doctrine, unauthorized reproduction of copyrighted materials is permissible for such purposes as criticism, comment, news reporting, teaching, scholarship or research. If duplicating or changing a product is to fall within the bounds of fair use, these four standards must be met for any of the foregoing purposes:

- A. **THE PURPOSE AND CHARACTER OF THE USE.** The use must be for such purposes as teaching or scholarship and must be nonprofit.
- B. **THE NATURE OF THE COPYRIGHTED WORK.** Staff may make single copies of the following for use in research, instruction or preparation for teaching: book chapters; articles from periodicals or newspapers; short stories, essays or poems; and charts, graphs, diagrams, drawings, cartoons or pictures from books, periodicals, or newspapers in accordance with these guidelines.
- C. **THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED.** In most circumstances, copying the whole of a work cannot be considered fair use; copying a small portion may be if these guidelines are followed.
- D. **THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK.** If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials may be an infringement, and making multiple copies presents the danger of greater penalties.

While the School District encourages its staff to enrich the learning programs by making proper use of supplementary materials, it is the responsibility of employees to abide by the School District's copying procedures and obey the requirements of the law. In no circumstances shall it be necessary for employees to violate copyright requirements in order to perform their duties properly. The School District cannot be responsible for any violations of the copyright law by its employees.

Any employee who is uncertain as to whether reproducing or using copyrighted material complies with the district's procedures or is permissible under the law should contact the superintendent or supervising principal, who will assist employees in obtaining proper authorization to copy or use protected material when such authorization is required.

Legal References: P.L. 94-553 Federal Copyright Law of 1976

(U.S. Code, Title 17)

INSTRUCTION

Employees may make copies of copyrighted school district materials that fall within the following guidelines. Where there is reason to believe the material to be copied does not fall within these guidelines, prior permission

shall be obtained from the principal. Employees who fail to follow this procedure may be held personally liable for copyright infringement.

Authorized Reproduction and Use of Copyrighted Material in Books and Periodicals

In preparing for instruction, a teacher may make or have made a single copy of:

- A. A chapter from a book;
- B. An article from a newspaper or periodical;
- C. A short story, short essay or short poem; or
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

A teacher may make multiple copies not exceeding more than one per pupil, for classroom use or discussion if the copying meets the tests of "brevity, spontaneity and cumulative effect" set by the following guidelines. Each copy must include the notice of copyright present in the original work.

- A. Brevity
 1. A complete poem, if less than 250 words and if printed on not more than two pages, may be copied; excerpts from longer poems cannot exceed 250 words;
 2. Complete articles, stories or essays of less than 2500 words may be copied. Excerpts from prose works of not more than 1000 words or 10% of the work - whichever is smaller - may be copied, but in any event, a minimum of 500 words may be copied.
 3. Each numerical limit set forth above may be expanded to permit the completion of an unfinished line of a poem or an unfinished prose paragraph;
 4. One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue may be copied.
 5. "Special" works cannot be reproduced in full under any circumstances; however, an excerpt of not more than two published pages containing not more than 10% of the words in the text of such special work may be reproduced. What constitutes a "special" work is not clearly defined; however, special works include children's books combining poetry, prose or poetic prose with illustrations and which are less than 2500 words in their entirety. For a further discussion on what constitutes a "special" work, see Agreement on Guidelines for classroom copying in Not-for-Print educational institutions with respect to books and periodicals.
- B. Spontaneity - Copying should be at the "instance and inspiration" of the individual 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.
- C. Cumulative Effect - Teachers are limited to using copied material for only one course in the school in which copies are made. No more than one short poem, article, story, essay or two excerpts from the same author may be copied, and no more than three works or excerpts can be copied from a collective work or periodical volume during one class term. Teachers are limited to nine instances of multiple copying for one course during one class term. The numerical limitations set forth above do not apply to current news periodicals, newspapers and current news sections of other periodicals.

Performances by teachers or students of copyrighted dramatic works without authorization from the copyright owner are permitted as part of a teaching activity in a classroom or instructional setting. All other performances require permission from the copyright owner.

Notwithstanding any of the foregoing, the copyright law prohibits using copies to create, replace or substitute for anthologies, compilations or collective works. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. "Consumable" works include: workbooks, exercises, standardized tests, test booklets and answer sheets. Teachers cannot substitute copies for the purchase of books, publishers' reprints or periodicals, nor can they repeatedly copy the same item from term to term. Copying cannot be directed by a "higher authority", and students cannot be charged more than actual cost of photocopying.

Teachers may use copyrighted material in overhead or opaque projectors for instructional purposes.

Authorized Reproduction and Use of Copyrighted Materials in the Library

A library may make a single copy (containing the notice of copyright present on the original work) of:

- A. An unpublished work which is in its collection solely for purposes of preservation and security or for deposit for research use in another qualified library or archives.
- B. A published work in order to replace it because it is damaged, deteriorated, lost or stolen, provided that an unused replacement cannot be obtained at a fair price.

A library may provide a single copy of copyrighted material to a student or staff member at no more than the actual cost of photocopying. The copy must be limited to one article of a periodical issue or a small part of other material, unless the library finds that the copyrighted work cannot be obtained elsewhere at a fair price. In the latter circumstance, the entire work may be copied. In any case, the copy shall contain the notice of copyright present in the original work and the student or staff member shall be notified that the copy is to be used only for private study, scholarship or research. Any other use may subject the person to liability for copyright infringement and the library shall not make a copy if it has notice of any other use. The foregoing reproduction right shall not apply to musical works, motion pictures or other audiovisual works (other than an audiovisual work dealing with news), or pictorial, graphic or sculptural works (other than pictorial or graphic works published as illustrations, diagrams or similar adjuncts to works of which copies are reproduced hereunder).

At the request of a teacher, copies may be made for reserve use. The same limits apply as for single or multiple copies designated in "Authorized Reproduction and Use of Copyrighted Material in Print."

Authorized Reproduction and Use of Copyrighted Music

For academic purposes, other than performance, teachers may make a single copy of an entire performable unit (section), movement, aria, etc. from a printed musical work that is (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, for purposes of preparing for instruction.

A teacher may make multiple copies not exceeding one copy per pupil for classroom use of an excerpt of not more than 10% of a printed musical work if it is to be used for academic purposes other than performance, provided that the excerpt does not comprise a part of the whole musical work which would constitute a performable unit such as a selection, movement, or aria. In an emergency, a teacher may make and use replacement copies of printed music for an imminent musical performance when the purchased copies have been lost, destroyed or are otherwise not available, provided that purchased copies shall be substituted in due course.

A teacher may make and retain a single recording of student performances of copyrighted material when it is made for purposes of evaluation or rehearsal.

A teacher may make and retain a single copy of excerpts from recordings of copyrighted musical works owned by the school or the individual teacher for use as aural exercises or examination questions.

A teacher may edit or simplify purchased copies of music provided that the fundamental character of the music is not distorted. Lyrics shall not be altered or added if none exist.

Copying cannot be used to create, replace or substitute for anthologies, compilations or collective works; copying of consumable works is prohibited. Copying for the purpose of performance is prohibited, except in the case of an emergency as set forth above, and copying for the purpose of substituting for the purchase of music is prohibited, except as set forth in the first and second paragraphs above. All copies must include the copyright notice appearing on the printed copy.

Performance by teachers or students of copyrighted musical works is permitted without the authorization of the copyright owner as part of a teaching activity in a classroom or instructional setting. The purpose shall be instructional rather than for entertainment.

If the requirements of the foregoing paragraph are not satisfied, performances of nondramatic musical works which are copyrighted are permitted without the authorization of the copyright owner, provided that:

- A. The performance is not for a commercial purpose;
- B. None of the performers, promoters or organizers are compensated; and
- C. (1) There is no direct or indirect admission charge; or (2) Admission fees are used for educational or charitable purposes only; provided that the copyright owner has not objected to the performance.

All other musical performances require permission from the copyright owner.

Off-Air Recording of Copyrighted Programs

Television programs transmitted by television stations for reception by the general public without charge (hereinafter referred to as "broadcast programs") may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a school for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of this retention period, all off-air recordings must be erased or destroyed immediately.

Off-air recordings may be used once by individual teachers in the course of relevant instructional activities, and repeated once only when instructional reinforcement is necessary in classrooms and similar places devoted to instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days - not counting weekends, holidays, vacations, examination periods or other scheduled interruptions.

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. Each additional copy shall be subject to all provisions governing the original recording.

After the first ten (10) consecutive school days, off-air recordings 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. Permission must be secured from the publisher before the recording can be used for instructional purposes or any other non-evaluation purpose after the ten (10) day period.

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.

All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Authorized Reproduction and Use of Video Rentals or Videos Purchased for Home

Videos may only be rented for classroom use from agencies or companies which allow for such use. Many retail video rental stores have strict license agreements prohibiting use with large, non-home audiences. These restrictions may also apply to the use of videos purchased for home use. Staff is expected to review and honor these agreements.

Authorized Reproduction and Use of Copyrighted Computer Software and CD-ROM Products

Schools have a valid need for high-quality software at reasonable prices. To assure a fair return to the authors of software programs, the school district shall comply with the copyright laws and any usage agreements that are applicable to the acquisition of software programs.

To this end, the following guidelines shall be in effect:

- A. All copyright laws and license agreements between the vendor and the district shall be observed;
- B. 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 such use is permitted by the applicable license agreement;
- C. 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 district shall make a back-up program in accordance with the terms of the applicable license agreement or 17 U.S.C. and 117 and attest that the program will be used for replacement purposes only;
- D. The superintendent or designee is authorized to sign a software license agreement on behalf of the school. A copy of said agreement shall be retained by the District Office.

Copying Limitations

Circumstances will arise when staff are uncertain whether or not copying is prohibited. In those circumstances, the superintendent or designated copyright compliance officer should be contacted. The following prohibitions have been expressly stated in guidelines agreed to by representatives of educators and authors/publishers:

- A. Reproduction of copyrighted material shall not be used to create or substitute for anthologies, compilations or collective works.
- B. Unless expressly permitted by agreement with the publisher and authorized by district action, there shall be no copying from copyrighted consumable materials such as workbooks, exercises, test booklets, answer sheets and the like.
- C. Staff shall not:
 - 1. Use copies to substitute for the purchase of books, periodicals, music recordings, computer software or other copyrighted material except as permitted by district procedure;
 - 2. Copy or use the same item from term to term without the copyright owner's permission;
 - 3. Copy or use more than nine instances of multiple copying of protected material for one course in any one term;
 - 4. Copy or use more than one short work or two excerpts from works of the same author in any one term; or
 - 5. Copy or use protected material without including the notice of copyright present in the original work and the following is a satisfactory notice: NOTICE: THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW.