

## General 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 Superintendent or designated copyright compliance officer. Appendix 1 is a *Fair Use Assessment Factors Checklist*. Appendix 2 contains use resources available online.

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. Note:* The presence of a copyright notice is not determinative.
  - a. No, if it is in the public domain.
  - b. No, if it is a U.S. Government publication.
  - c. No, if it is an idea or method described in copyrighted work.
  - d. 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 or drama, recite prose or poetry, or if you plan to play a video and/or audio recording.
  - e. Yes, if you plan 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 Superintendent or designated copyright compliance officer.*
  - a. No, if your planned use of printed work is within the *fair use* exception as defined in 17 U.S.C. §107. See Appendix 1.
  - b. No, if your planned use of the work is within the *library’s special rules* exception as defined in 17 U.S.C. §108.
    - A library may make a single copy containing the copyright notice for the purpose of archiving lost, stolen, damaged, or deteriorating works.
    - A library may make a single copy containing the copyright notice 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 as defined in 17 U.S.C. §110.
 

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.

- 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 Superintendent or designated copyright compliance officer before showing the off-air recording of television programs, video rentals, or videos purchased for home use. You must follow any applicable license agreements.
- j. You must receive permission from the Superintendent or designated copyright compliance officer before using any non-District owned software, DVD products, and/or downloadable files in District-owned equipment. No one may install or download any program on District-owned equipment without the Superintendent or designee's permission.
- k. You must follow licensing agreements applicable to District-owned software and DVD 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 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 District shall make a back-up program in accordance with the terms of the applicable licensing agreement or 17 U.S.C. §117.

### **Appendix 1: Copyright Fair Use Assessment Factors Checklist**

#### **Purpose and Character of Use of Copyrighted Work**

Use this checklist to analyze whether material falls under the *fair use doctrine*. Factors favoring fair use will generally indicate that material may be used without seeking permission from the copyright owner. Factors opposing fair use require permission to reprint or adapt the material from the copyright owner. If a copyright owner is known, always request permission before using any material.

| <b>Favoring Fair Use</b>  | <b>Opposing Fair Use</b>   |
|---|--|
| <input type="checkbox"/> Teaching                                   | <input type="checkbox"/> Commercial activity – gain of financial rewards from use; e.g., sale of goods, services; advertising; fundraising, etc. |
| <input type="checkbox"/> Research/Scholarship/Academics             | <input type="checkbox"/> Profiting from use  |
| <input type="checkbox"/> Nonprofit educational institution          | <input type="checkbox"/> Bad-faith behavior; e.g., misrepresentation of intended use   |
| <input type="checkbox"/> Criticism                                  | <input type="checkbox"/> Denying credit to original author or artist   |
| <input type="checkbox"/> Comment                                    | <input type="checkbox"/> Entertainment   |
| <input type="checkbox"/> News reporting that is fact intensive      | <input type="checkbox"/> News reporting with a new perspective or creative flair   |
| <input type="checkbox"/> Used to create something different and new | <input type="checkbox"/> Making a stylized version that retains the core elements of the original work   |
| <input type="checkbox"/> Restricted access given                    |  |
| <input type="checkbox"/> Parody                                     |  |

#### **Nature of Copyrighted Work Used**

| <b>Favoring Fair Use</b>                             | <b>Opposing Fair Use</b>  |
|--|---|
| <input type="checkbox"/> Published work              | <input type="checkbox"/> Unpublished work                         |
| <input type="checkbox"/> Factual or nonfiction based | <input type="checkbox"/> Highly creative work (art, music, novel) |
| <input type="checkbox"/> Out of print work           | <input type="checkbox"/> Fiction                                  |

#### **Amount and Substantiality of Copyrighted Work Used**

| <b>Favoring Fair Use</b>  | <b>Opposing Fair Use</b>                                       |
|---|--|
| <input type="checkbox"/> Small amount used                                      | <input type="checkbox"/> Large portion or whole work used      |
| <input type="checkbox"/> Portion used not central or significant to entire work | <input type="checkbox"/> Portion used is the heart of the work |

Impact on Market of Copyrighted Work (often viewed as the most important factor)

| Favoring Fair Use  | Opposing Fair Use   |
|--|---|
| <input type="checkbox"/> User owns lawfully acquired/purchased copy                            | <input type="checkbox"/> Use could supplant original author's sale for copyrighted work                           |
| <input type="checkbox"/> One or few copies made  | <input type="checkbox"/> Significantly impairs the market/potential market of copyrighted work or derivative work |
| <input type="checkbox"/> No significant effect on market/potential market for copyrighted work | <input type="checkbox"/> Reasonable available licensing mechanisms  |
| <input type="checkbox"/> No similar product marketed by copyright holder                       | <input type="checkbox"/> Affordable permission to use copyrighted work available                                  |
| <input type="checkbox"/> No ready licensing or permission mechanism                            | <input type="checkbox"/> Numerous copies made   |
|  | <input type="checkbox"/> Made accessible on the Internet or elsewhere   |
|  | <input type="checkbox"/> Repeated or long-term use  |

In addition to the defense of fair use, a user of a work may also raise the argument that the expression at issue is not protectable because it is composed of *scènes à faire*, which are elements of work that are so rudimentary, commonplace, standard or unavoidable that they do not distinguish one work in a class from another, and therefore receive no copyright protection. Examples of *scènes à faire* might include:

- Story elements, e.g., an adventure story involving a wizened old mentor to a young upstart
- A horror story featuring an unstoppable killer
- Cliché phrases such as *ruby red lips*

A related concept is the *merger doctrine*, which provides that if an idea can be expressed in only a few limited ways, the expression *merges* with the idea and cannot be protected by copyright. Examples of merger may be:

- An order form for a certain type of product
- The architectural layout of a one-bedroom apartment
- Sweepstakes rules

Like questions of fair use, these issues are likely to be factually intensive and their application can be highly subjective. Consult the board attorney for guidance.

Adapted with permission from Steven Mandell; © 2021 Mandell Menkes LLC. All Rights Reserved.

## **Appendix 2: Copyright Resource List**

U.S. Copyright Office

[www.copyright.gov](http://www.copyright.gov)

U.S. Copyright Office Fair Use Index

[www.copyright.gov/fair-use/](http://www.copyright.gov/fair-use/)

Copyright Act, as amended, Title 17 of the United States Code

[www.copyright.gov/title17/92chap1.html](http://www.copyright.gov/title17/92chap1.html)

Copyright and Artificial Intelligence

[www.copyright.gov/ai/](http://www.copyright.gov/ai/)

Copyright Term and the Public Domain in the United States; updated every Jan. 1.

Cornell University Copyright Information Center

<https://guides.library.cornell.edu/copyright>

U.S. Copyright Office Circular 21: Reproductions of Copyrighted Works by Educators and Librarians

[www.copyright.gov/circs/circ21.pdf](http://www.copyright.gov/circs/circ21.pdf)

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals (see Circular 21: Reproductions of Copyrighted Works by Educators and Librarians, page 6) [www.copyright.gov/circs/circ21.pdf](http://www.copyright.gov/circs/circ21.pdf)

TEACH Act (Technology, Education and Copyright Harmonization Act of 2002)

[www.copyright.gov/legislation/pl107-273.pdf](http://www.copyright.gov/legislation/pl107-273.pdf)

The TEACH Act: New roles, rules and responsibilities for academic institutions

<https://library.udel.edu/wp-content/uploads/2023/08/copyright-teach-act.pdf>

Copyright: Distance Education and the TEACH Act

[www.ala.org/advocacy/copyright/teachact/distanceeducation](http://www.ala.org/advocacy/copyright/teachact/distanceeducation)

Copyright Crash Course: TEACH ACT

The University of Texas Libraries

<https://guides.lib.utexas.edu/copyright/teachact>

WIPO (World Intellectual Property Organization)

[www.wipo.org](http://www.wipo.org)

MPAA (Motion Picture Association of America)

[www.mpaa.org](http://www.mpaa.org)

SIIA (Software & Information Industry Association)

[www.siia.net/](http://www.siia.net/)

CCC Copyright Clearance Center (Copyright permission for publications worldwide)

[www.copyright.com](http://www.copyright.com)

ASCAP (American Society of Composers, Authors and Publishers)

[www.ascap.com](http://www.ascap.com)

The Authors Registry (Maintains an extensive directory of authors)

[www.authorsregistry.org](http://www.authorsregistry.org)

Copyright & Fair Use (Stanford University Libraries)

<https://fairuse.stanford.edu/>

Copyright Society of the USA

[www.copyrightsociety.org](http://www.copyrightsociety.org)

Crash Course in Copyright

University of Texas Libraries

<https://guides.lib.utexas.edu/copyright>

National Writers Union

[www.nwu.org](http://www.nwu.org)

Project Gutenberg (Internet's oldest producer of FREE electronic books (eBooks or eTexts))

[www.gutenberg.org](http://www.gutenberg.org)

WATCH: Writers and Their Copyright Holders

The University of Texas at Austin

<https://norman.hrc.utexas.edu/watch/>