

FREDERICK COUNTY PUBLIC SCHOOLS	Reg. No. 500-29
Subject: COPYRIGHT	Date of Issue: 9/4/84
Preparing Office: Office of the Superintendent	Amended: 11/5/08

I. Policy 510

II. Procedures

A. Definitions

1. Brevity

a. Poetry

- Complete poem if less than 250 words and if printed on not more than two pages, or
- From a longer poem, an excerpt of not more than 250 words.

b. Prose

- Either a complete article, story or essay of less than 2,500 words, or
- An excerpt from any prose works of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

c. Illustration

- One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

d. "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. Such works may not be reproduced in their entirety.

2. Spontaneity

- a. The copying is at the instance and inspiration of the individual teacher (but shall not be used to substitute for purchase of books, publisher's reprints or periodicals, and should not be directed by a higher authority).

- b. The decision to use the work and the moment of its use are so close in time that it would be unreasonable to expect a reply to a request for permission.

3. Cumulative Effect

- a. The copying of the material is for only one course in the school in which the copies are made.

- b. Not more than one short poem, article, story, essay or two excerpts from the same author may be copied, nor more than three from the same collective work or periodical volume during one class term.
 - c. There shall not be more than nine instances of such multiple copying for one course during one class term.
- B. The fair use of a copyrighted work including such use by reproduction in copies or sound recordings or by any other means for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include the following:
- 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
 - 2. The nature of the copyrighted work.
 - 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
 - 4. The effect of the use upon the potential market for or value of the copyrighted work.
- C. The following shall be prohibited:
- 1. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works, including copies of various works or excerpts which are accumulated or reproduced and used separately.
 - 2. 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.
- D. Copying shall not:
- 1. Substitute for the purchase of books, publishers' reprints or periodicals.
 - 2. Be directed by higher authority.
 - 3. Be repeated with respect to the same item by the same teacher from term to term.
- E. No charge shall be made to the student beyond the actual cost of photocopying. The cost to be the same as the cost for student records reproduction.
- F. Guidelines for classroom copying are as follows:
- 1. **Single copies** may be made of any of the following by or for a teacher at the request of the individual for scholarly research or use in teaching or preparation to teach a class:
 - 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
2. **Multiple copies** (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion provided that:
- a. The copying meets the tests of brevity, spontaneity, and cumulative effect as defined in Section II. A. of this regulation; and
 - b. In the absence of a verified exception, each copy shall include a notice of copyright.

G. Library Copying

1. Libraries are accorded special copying privileges, but with certain restrictions.
- a. Honor requests for single copies of one article or a complete small portion of a periodical or book, or up to 10 percent of an excerpt from a record. Stipulations: the copies may be used only for private study or research and copies cannot be given out if they are perceived to be part of a concerted effort to secure multiple reproduction.
 - b. Make multiple copies for teachers, according to the fair use guidelines.
 - c. Reproduce and distribute a copy of an out-of-print work, provided no copy can be obtained at a fair price.
 - d. Make limited copies of off-the-air tape recordings of daily newscasts for distribution to students/researchers.
 - e. Copy an unpublished work for preservation or security, or for another public library's research use.
 - f. Copy to preserve a deteriorating work, if an unused copy cannot be found at a fair price after a reasonable search.
 - g. Copy for interlibrary loan arrangements where such activity would not constitute a substitute for purchase of a work.
2. School libraries may not:
- a. Make copies to avoid subscription costs.
 - b. Make copies of audio-visual works, unless for the purpose of preservation or security, or in accordance with the fair use provisions.
 - c. Copy without including a notice of copyright.

H. Performance

1. The right to perform dramatic works and musical dramatic works are usually licensed by the copyright owner or the owner's agent, and schools must secure the right to performance and expect to pay royalties. Conversely, most nondramatic musical works may be performed without obtaining permission.
2. Other legitimate performances and activities include:
 - a. Use of copyrighted works (by instructors or pupils) in the classroom.
 - b. Use of nondramatic literary or musical work performed on closed circuit TV to classrooms, or to disabled students for teaching purposes, only as part of the systematic instructional activities, and only if it is directly related to the teaching content of the program.
 - c. Use of nondramatic or musical work at school concerts provided there is no direct or indirect commercial advantage, no compensation to the performers, promoters or organizers, and no admission charge. If there is an admission charge, all proceeds must be used for educational or charitable purposes.
 - d. Use of nondramatic literary or musical works, or of dramatic musical works of a religious nature at a religious assembly.
 - e. Use of nondramatic literary works by transmission of specifically designed programs for blind and deaf persons, broadcast according to noncommercial requirements, and carried on government educational broadcasting stations, radio subcarrier authorization or cable system facilities.
3. Performers brought in from outside the school will have to secure performance rights on the material used, unless they are judged to be instructors, and their activities are confined to the classroom. Auditoriums or stages may be considered classrooms, if they are used for "systematic instructional activities."
 - a. As long as school performing groups remain separate from the world of professional entertainment, their performance rights for educational functions are not hindered. But, public performance in connection with any commercial or profit-making enterprise is subject to the exclusive rights of the copyright owner, even if the public is not charged a fee.
 - b. "Name" professionals who receive a fee for appearing with a school group void the educational exemption, even if the event is for "educational, religious, or charitable purposes." Professional groups staging a concert on school facilities will certainly require copyright clearance.

I. Multimedia/Visual Aids

1. Teachers may show videos and other audio-visual aids--including copies projected by projectors provided they answer yes to all five (5) fair-use limitations:
 - a. Are you a nonprofit educational institution?
 - b. Is the showing by and for students and teachers in a regularly scheduled class?
 - c. Is the showing in a classroom or other instructional place?
 - d. Is the showing from a legally acquired copy of the work?
 - e. Is the showing a material part of the lesson you are teaching on that topic?

Educators are prohibited from showing films solely for entertainment or rewards purposes, and are to evaluate films scheduled for assembly programs accordingly.

2. If teachers cannot answer as stipulated in Section I.1. above, then the following portion limitations apply:
 - a. Motion media: lesser of 10% or 3 minutes
 - b. General text material: lesser of 10% or 1000 words
 - c. Poetry: up to 250 words; no more than 3 poems of a single poet; no more than 5 poems from an anthology
 - d. Music, lyrics, music video: lesser of 10% or 30 seconds
 - e. Illustrations and photographs: No more than 5 images by single artist; lesser of 10% or 15 images from a collection
 - f. Numerical data sets: lesser of 10% or 2500 field or cell entries

J. Recording Musical Performances

1. Schools wishing to distribute recordings of copyrighted materials performed by students must first obtain a compulsory license. This may be granted by the copyright owner under specified conditions. A compulsory license may also be required for classroom teachers wishing to arrange musical scores for their own teaching purposes.
2. Making plays into short stories, or ballets out of dramas must also be accompanied by permission from the author. Students must have permission before they may arrange copyrighted works. However, music teachers may make simplifications for teaching purposes without permission from the owner.
3. Schools may relay commercial broadcasts containing copyrighted material if it is done within the classroom as part of the systematic instructional activity and if it is directly related to the teaching content of the course.

K. Video Recording

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including cable transmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon conclusion of this period, all recordings must be erased or destroyed.

"Broadcast programs" are defined as those programs transmitted by television stations for the general public, without charge.

2. Even though the programs may be held for forty-five (45) days, they may only be used once by individual teachers in the course of relevant teaching activities, and repeated only once when instructional reinforcement is necessary, during the first ten (10) consecutive school days in the forty-five (45) day calendar retention period.

"School days" are school session days - not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions - within the forty-five (45) day calendar period.

3. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) day period only for teacher evaluation purposes and may not be used for student exhibition or any other non-evaluation purpose without authorization.
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 additional copy shall be subject to all provisions governing the original recording.
6. 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.
7. All copies of off-air recordings must include the copyright notice on the program as recorded.

L. Computer Software

1. A "computer program" is defined as "a set of statements or instructions to be used directly in a computer in order to bring about a certain result."
2. The owner of a copy of a computer program is not infringing on the copyright by making or authorizing the making of another copy or adaptation of that program if the following criteria are met.

- a. That the new copy or adaptation is created in order to be able to use the program in conjunction with the machine and it is used in no other manner.
 - b. That the new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.
 - c. Any copies prepared or adapted may not be leased, sold or otherwise transferred without the authorization of the copyright owner.
3. The computer program shall not be adapted to meet local needs and then duplicated for distribution.

M. Educational Uses of Music

1. The purpose of the following guidelines is to state the minimum standards of educational fair use under Section 107 of the Copyright Revision Bill. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying may not be permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Permissible Uses

- a. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
- b. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies may not exceed one copy per student.
- c. For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is
 - (1) Confirmed by the copyright proprietor to be out of print, or
 - (2) Unavailable except in a larger work may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
- d. Printed copies that have been purchased may be edited or simplified, provided that the fundamental character of the work is not distorted, that the lyrics (if any) are not altered, and that no lyrics are added, if none exist.

- e. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- f. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This permitted copying pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

2. Prohibitions

- a. Copying to create or to replace or substitute for anthologies, compilations or collective works is prohibited.
- b. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material is prohibited.
- c. Copying for the purpose of performance, except as in M.1.a. above, is prohibited.
- d. Copying for the purpose of substituting for the purchase of music, except as in M.1.a. and M.1.b. above, is prohibited.
- e. Copying without inclusion of the copyright notice which appears on the printed copy is prohibited.

Note: Cross-reference Regulation 400-77 "Computers: FCPS Website Publishing."

Approved:

Original signed by

Linda D. Burgee
Superintendent