



SOUTHWESTERN MICHIGAN COLLEGE

Agreement of Guidelines for Classroom Copying in Not-for-Profit Educational Institutions

With Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. 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 not 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.

GUIDELINES

1. Single Copying for Instructors

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her 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 for Classroom Use

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 and spontaneity as defined below, and
- B. Meets the cumulative effect test as defined below, and
- C. Each copy includes a notice of copyright.

Definitions:

Brevity

1. **Poetry:** (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.
2. **Prose:** (a) Either a complete article, story or essay of less than 2500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.

Each of the numerical limits stated in 1 and 2 above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

3. **Illustration:** One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
4. **“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. Paragraph 2 above notwithstanding, such “special works” may not be reproduced in their entirety; however, an excerpt comprising of not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof, may be reproduced.

Spontaneity

1. The copying is at the instance and inspiration of the individual teacher, and
2. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time

Cumulative Effect

1. The copying of the material is for only one course in the school in which the copies are made.
2. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
3. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

3. Prohibitions as to 1 and 2 above

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately
- B. 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.

- C. Copying shall not: (a) substitute for the purchase of books, publishers' reprints or periodicals; (b) be directed by higher authority; (c) be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 1207 of H.R. 2223. 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 guideline may not be permissible in the future, and conversely that in the future other types of copying not 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.

1. Permissible Uses

- A. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
- B. For academic purposes other than performance, single or 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 selection, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.
- C. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any altered or lyrics added if none exist.
- D. 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.
- E. 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 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 replace or substitute for anthologies, compilations or collective works.
- 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 sheet and like materials.
- C. Copying for the purpose of performance, except as in 1(A) above.
- D. Copying for the purpose of substituting for the purchase of music, except as in 1(A) and 2(A) above.
- E. Copying without inclusion of the copyright notice which appears on the printed copy.

The two sets of guidelines were adopted not only by the House Committee but also by the Senate Judiciary Committee in the conference report "as part of their understanding of fair use...." The individuals, who labored to reach the above agreements, as well as the congressional committees, feel the guidelines for print materials and for music are reasonable and fair and clear. On the other hand,

individual instructors and librarians are already asking questions and the press has already begun to interpret. Hence, some of the questions most frequently asked by instructors and librarians are listed in each section of this report. The questions have been selected at random to include as broad a scope as possible and to clarify the intent of the parties who designed the guidelines and of the committees that adopted them in their reports. However, the answers should not be construed as official interpretations of the federal law. Only the courts have this responsibility.

USES OF COPYRIGHTED MATERIALS

(Key considerations based on minimum standards of educational fair use under Section 107)

GENERALLY PERMITTED	GENERALLY NOT PERMITTED
Books and periodicals	
Spontaneous	Planned ahead
Nonprofit, noncommercial	For profit
Classroom use	Public performance
Single copy (for teacher's own use)	Single Copy (for use by other teachers)
Multiple copies (for classroom) <ul style="list-style-type: none"> • excerpts • one class/course • Teacher initiative • non-consumable • supplement • separate use • cost only to student 	Multiple copies (beyond classroom) <ul style="list-style-type: none"> • entire book/chapter • several classes/courses • higher authority • consumable • substitute • anthologizing • charge to student above cost
Television and Radio	
Face-to-face	Electronic, Remote
Closed Circuit	Open Circuit (commercial broadcast)
Systematic Instructional (classroom)	Out-of-School Instructional
Special Audience (special needs)	General Audience (public)
Teacher in-Service, Govt. Employees	All Other Employees
Music	

Emergency Copying

Teaching Purposes

Excerpts

Editing, simplification

Student Evaluation, Rehearsals (recordings)

Exams, Aural Exercises

Permanent Copying

Performance Purposes

Performable Unit

Distortions, Alterations

Distribution of Multiple Copies (compulsory licensing)

Duplication of Tapes

Audio-Visual

Unfinished Business

Off-Air recordings of Commercial TV Programs

Fair use is recognized but is not spelled out – still unfinished business

What an Instructor May Copy

An instructor may:

1. Make a single copy of the following:
 - a. A chapter from a book
 - b. An article from a periodical or newspaper
 - c. A short story, sort 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
 - e. A short excerpt (up to 10% from a performable unit of music, such as a song, movement, or section, for study purposes
2. Make multiple copies (not to exceed one per pupil) for classroom use of the following:
 - a. A complete poem if less than 250 words (and if printed on not more than two pages)
 - b. An excerpt of not more than 250 words from a longer poem
 - c. A complete article, story or essay of less than 2,500 words
 - d. An excerpt from any prose work of not more than 1,000 words (or 10% of the work), whichever is less, but in any event a minimum of 500 words
 - e. One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue

- f. An excerpt of not more than two pages of a “special work” (such as children’s poetry, prose or poetic prose) containing words and pictures, but not to exceed 10% of the words in the text
 - g. Up to 10% of a performable unit of music (song, movement, section) for academic purposes other than performance
3. Make a single recording of student performance for evaluation, rehearsal, or archival purposes.
 4. Make a single recording of aural exercises or examination questions using excerpts from recorded copyright materials.
 5. Make an emergency replacement copy to substitute for a purchased copy that is not available for an imminent musical performance.
 6. Display a copy of a work on an opaque projector.
 7. Make a single transparency, provided the fair use criteria and guidelines are complied with. (See 1.d above)

NOTE: The above copying is mandatory permitted under the fair use guidelines appearing in the House Report. The guidelines set up minimum and not the maximum standards of fair use so other uses may or may not be permitted, depending on the circumstances.

What an Instructor May Not Copy

An instructor may not:

1. Copy to create anthologies, compilations or collective works or to replace or substitute for them.
2. Copy from works which are intended to be consumable (workbooks, exercises, standardized tests and test booklets, and answer sheets).
3. Copy so as to substitute for the purchase of books, publishers’ reprints, periodicals, music or recording.
4. Copy on direction of higher authority (supervisor, coordinating teacher, principal or if prescribed by the course of study).
5. Copy the same item from term to term without securing permission.
6. Copy more than one short work (poem, article, story, essay) or two excerpts from one author’s works in any one term.
7. Copy the same material for more than one course in the school in which the copies are made.

8. Copy more than three short works from the same collective work or periodical volume during one class term.
9. Utilize more than nine instances of multiple copying per course, per term.
10. Make copies of music (or lyrics) for performance of any kind in the classroom or outside of it, with the exception of the emergency replacement copy needed for an imminent musical performance.
11. Make copies without inclusion of the copyright notice.
12. Charge students more than the actual cost of the authorized copies.

Questions to be Considered in Determining if a Given Use of a Work is Probably a Fair Use

(Based on the minimum standards of educational fair use contained in the House Report guidelines)

General

1. Is the contemplated use a spontaneous use? (i.e., you do not have time to write for permission and obtain clearance)
2. Is the contemplated use for nonprofit education purposes rather than for profit?
3. Is the intent to use the material in the classroom (for instructional

Single copy

1. In the case of a chapter from a book, an article from a periodical or newspaper, a short story, essay or poem, or a chart or graph, is the contemplated use for the teacher only rather than for each member of the class and/or by other teachers?

Multiple copies

1. When multiple copies are needed for classroom use, does the copying meet the tests of brevity and spontaneity outlined in the guidelines?
2. Is the copying limited to (a) one short poem, article, short story, essay or (b) no more than two excerpts from the same author, or (c) no more than three excerpts from the same collective work during one class term?
3. Is the copying of the material for only one course in the school in which the copies are made?
4. Is the copying for use only time only and not to be repeated in subsequent terms?
5. Is the copying on the teacher's own initiative and not mandated by the school district or higher authority?
6. Can you allege that the copying is not to be used as a substitute for purchase of books, publishers' reprints or periodicals?
7. Will you agree not to use the copying for purposes of anthologizing or compilation?
8. Can you affirm that the work being copied is not a consumable work (workbook exercise, standardized test, test booklet or answer sheet)?
9. Is no charge made to the student for the copying, in excess of the cost?

Instructional television

1. Is the work to be performed, displayed or played in the course of a face-to-face teaching situation in the classroom (or similar place devoted to instruction)?
2. Is the work being performed or displayed originating on closed-circuit television within the school building where the instructor and pupils are located rather than transmitted from an outside location into classrooms?
3. Is the performance or display a regular part of the systematic instructional activities of a nonprofit educational institution?
4. Is the transmission made primarily for reception by persons whose disabilities or other special circumstances prevent their attendance in classrooms or similar places devoted to instruction?
5. Is the transmission made primarily for reception by teachers or other government employees for their own professional development?

Music

1. Is the copying for emergency purposes only?
2. Is the copying for teaching purposes other than performance?
3. Do you contemplate making excerpts only and not a section, movement or aria which would constitute a performable unit in itself?
4. Will your use involve editing or simplifying but under no conditions distorting or altering the fundamental character of the work?
5. Is the copying of performances by students for their own evaluation and for rehearsal purposes?
6. Is the copy of a sound recording of copyrighted music, made from sound recordings owned by the school or an individual teacher, to be used for the purpose of constructing aural exercise or examinations?

NOTE: If the above questions can be answered affirmatively in a given case, the use probably qualified as a fair use. The above considerations should not be examined in isolation but rather must be reviewed together in determining the extent to which a given is permissible under the law.

VIDEO CASSETTE COPYRIGHT INFORMATION

CHAPTER 3: EDUCATORS' RIGHTS

Educators' performance rights appear in Section 110, which includes ten exceptions to the proprietors' right to control performances and displays. Only one applies to performances of audiovisual works, and that appears in Section 110(1). That section authorizes almost all types of performances and displays in face-to-face teaching in nonprofit educational institutions.

Section 110. Limitations of exclusive rights: Exemption of certain performances and displays.

Notwithstanding the provisions of Section 106, the following are not infringements of copyrights:

One performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made....1

The House of Representatives committee report that accompanied the copyright act defines several key phrases:

The “teaching activities” exempted by the clause encompass systematic instruction of a very wide variety of subjects, but they do not include performances or displays, whatever their cultural value or intellectual appeal that are given for recreation or entertainment of any part of their audience. [2](#)

“In the course of face-to-face teaching activities” is intended to exclude broadcasting or other transmissions from an outside location into classrooms, whether radio or television and whether open or closed circuit. However, as long as the instructor and pupils are in the same building or general area, the exemption would extend to the use of devices for amplifying or reproducing sounds and for projecting visual images.[3](#)

Instructors or pupils - ...the performance or display must be “by instructors or pupils,” thus ruling out performances by actors, singers, or instrumentalists brought in from outside the school to put on a program. However, the term “instructors” would be broad enough to include guest lecturers if their instructional activities remain confined to classroom situations.

In general, the term “pupils” refers to the enrolled members of a class. [4](#)

Classroom or similar place...- the teaching activities exempted by the clause must take place “in a classroom or similar place devoted to instruction.” For example, performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class, would fall outside the scope of clause (4) of Section 110. The “similar place” referred to in clause (1) is a place which is “devoted to instruction” in the same way a classroom is; common examples would include a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium, or the auditorium itself, if it is actually used as a classroom for systematic instructional activities. [5](#)

Further Clarification appears in *The Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Bill*:

1 Copyright Act, Sect. 110.

2 House Report, Sect. 110

3 Ibid.

4 Ibid.

5 Ibid

That the word “institution”, while broad enough to cover a wide range of establishments engaging in teaching activities, is not intended to cover “organizations”, “foundations”, “associations”, or similar “educational” groups not primarily and directly engaged in instruction. [6](#)

To summarize, Section 110 (1) authorizes the performance and display of any copyrighted work in face-to-face teaching, but it imposes some limitations.

1. Performances and displays of audiovisual works must be made from legitimate copies, including prerecorded video cassettes.
2. Performances and displays must be part of a systematic course of instruction and not for the entertainment, recreation or cultural value of any part of the audience.
3. Performances and displays must be given by the instructors or pupils.
4. Performances and displays must be given in classrooms and other places devoted to instruction.
5. Performances and displays must be part of the teaching activities of nonprofit educational institutions.
6. Attendance is limited to the instructors, pupils, and guest lecturers.

These six provisions are simple enough to be readily applied to nonprofit schools, colleges, and universities. In fact, the exemption is so broad that it seems unlikely it could be altered by anything short of an amendment to the copyright act. But the law is not always as simple as it appears, especially in the application of this sixth criterion, "nonprofit educational institution," which is not defined in the law.

This issue does not appear to involve nonprofit public, private, and church related schools and colleges so it is postponed to Chapter 5.

In conclusion, the Copyright act, whether intentionally or accidentally, prohibits performances of audio visual works, including video cassettes, except under the educational exemption, the home use exemption, the business meeting exemption, or with a license.

FAIR USE GUIDELINES FOR VIDEOTAPING OFF THE AIR

In March of 1979, Congressman Robert Kastenmeier, chairman of the House Subcommittee on Courts, Civil Liberties, and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guild and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

6 US House of Representatives. Copyright Law Revision, Part 6-Supplementary report of the register of Copyrights on the General Revision of the US Copyright Law: 1965 (Washington, ED.C.: Government Printing Office, 1965), p. 37. (Hereafter: Register's Report).

Miller, Jerome K., Using Copyrighted Videocassettes In Classrooms, Libraries, And Training Centers, Friday Harbor, WA: Copyright Information Services, 1988. pp. 11-14, 19, 83

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, 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 ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days not counting weekends, holidays, vacation, examination periods, and other scheduled interruptions within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of or 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 such additional copy shall be subject to all provisions governing the original recording.
6. 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, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. 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.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Miller, Jerome IK. And others, Video Copyright Permissions: A Guide To Securing Permission To Retain, Perform, And Transmit Television Programs Videotaped Off The Air, Friday Harbork, WA: Copyright Information Service, 1989. pp. 24-

PROCEDURES FOR VIDEO TAPING/COPYING TAPES (INTERNAL SMC)

The SMC Audio/Visual Center may video tape certain events that take place at SMC, or that pertain to the promotion of specific programs or departments on campus. These programs include, but are not limited to: Fine & Performing Arts programs, special campus wide events, community awareness programs, business/industry programs and other projects as assigned. No charges will be assessed for this service. Departments may request up to two copies of these tapes for their use.

Departments will be charged back where the Audio Visual Center must employ freelance crews to "shoot" on and off campus, after hours or on weekends.

Requests will be filled on a first come first served basis, unless otherwise directed by the President.

Departments will not be charged for "casual" taping of special events or class events when they occur during the 8-5 time frame. Any event that requires regular taping will be evaluated and a specific charge agreed upon with the Dean/Chair involved.

Pre-production evaluations will be done for all taping requests. If a charge will be incurred, the user will be informed of this before any taping will be done.

A one week notice will be required for "casual" taping events. More time will be required for more extensive taping.

The Audio Visual Center will not make "volume" copies of tapes. They will recommend outside vendors who can provide this service.