

Copyright Laws

24 P.S. §1-111

DATE OF ISSUE: July 1, 1999

DATE OF REVIEW: June 30, 2003

REPLACES: Copyright Laws, BEC 17 U.S.C. Section 107
Issued September 1, 1997

PURPOSE

This legislation takes cognizance of technological advancements in communication and education and sets standards for "fair use" of printed, audiovisual, graphic and musical materials by teachers.

Attached is a general summary of the regulations. Note, however, that copyright law is a rapidly changing field. It is recommended that for more detailed information on the new law, districts obtain a copy of the "General Guide to the Copyright Act of 1976." This booklet is available at no cost from:

The Copyright Office
Library of Congress
Washington, D.C. 20559

AUTHORITY

The Copyright Revision Act of 1976 (P.L. 94-553) became effective on January 1, 1978.

EDUCATIONAL USE

The Copyright Revision Act of 1976, P.L. 94-553, brings under the statutes for the first time the doctrine of "fair use" to cover the duplication and use of copyrighted materials by educators. Section 107 of the law says use of copyrighted works is not an infringement if used for "purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use, scholarship, or research)."

The criteria set by the statute for determining fair use include, but are not limited to:

- the purpose and character of the use, including whether use is for commercial or nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Copying for Teachers

Although the act does not set standards for copying of material by teachers, the House Judiciary Committee set "minimum" guidelines in its report on the legislation. Under those guidelines, teachers may make single copies of: book chapters for use in research, instruction or preparation for teaching; articles from periodicals or newspapers, short stories, essays or poems; and charts, graphs, diagrams, drawings, cartoons or pictures from books, periodicals or newspapers.

Multiple copies, not exceeding more than one per pupil, may be made for classroom use or discussion if the copying meets the tests of "brevity, spontaneity and cumulative effect" set by the guidelines. Each copy must include a notice of copyright.

Brevity

Under the brevity test, which is defined separately for poetry, prose and graphics, the guidelines say:

- A complete poem, if less than 250 words and two pages long, may be copied. Excerpts from longer poem cannot exceed 250 words;
- Teachers may copy complete articles, stories or essays of less than 2,500 words or excerpts from prose works less than 1,000 words or 10 percent of the work, whichever is less. In any event, the minimum is 500 words.
- Each numerical limit may be expanded to permit the completion of an unfinished line of a poem or prose paragraph;
- One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue may be copied;
- "Special" works, such as children's books combining poetry, prose or poetic prose, cannot be reproduced in full. An excerpt of no more than two pages and no more than 10 percent of the words may be copied.

Spontaneity

The copying should be at the "instance and inspiration of the individual teacher," say the guidelines. The "inspiration and decision" to use the work should be "so close in time" to the "moment of its use for maximum teaching effectiveness" that it would be "unreasonable to expect a timely reply for a request for permission."

Cumulative Effect

Teachers are limited by the guidelines to using the copied material for only one course in the school in which copies are made. No more than one short poem, article, story or two excerpts from the same author may be copied, and no more than three works 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 limitations, however, do not apply to current news periodicals, newspapers, and current news sections of other periodicals.

Prohibitions

The guidelines prohibit using copies to replace or substitute for anthologies, compilations or collective works. Works intended to be "consumable," including workbooks, exercises, standardized tests, test booklets and answer sheets, cannot be copied.

Teachers cannot substitute copies for the purchase of books, publisher's reprints or periodicals, nor can they repeatedly copy the same item from term to term. The copying of works cannot be directed by a "higher authority" and students cannot be charged more than the actual cost of photocopying.

LIBRARY COPYING

The act gives protection to libraries beyond the fair use section. Section 108 allows a library or archive to reproduce one copy or recording of a copyrighted work and distribute it if: "the reproduction or distribution is made without any purpose of direct or indirect commercial advantage, the collection of the library or archives is open to the public, or available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and if the reproduction or distribution of a work includes a notice of copyright."

Libraries and their employees are not liable for the "unsupervised use" of photocopying equipment provided that the machines display a warning notice that making the copies may be subject to the copyright laws.

The 1976 act continues some of the not-for-profit exemptions of the 1909 law, including the exemptions from copyright liability for face-to-face teaching activities involving performances or displays made by students or instructors; religious services; live performances without commercial advantage; and the use of instructional broadcasts.

In addition, non-commercial broadcasts for the blind or deaf and nonprofit performances of dramatic works transmitted to the blind by radio are exempt from copyright liability under the 1976 act. The law says the broadcasts must be connected to actual classwork as opposed to being public broadcasts of a cultural or educational nature.

EDUCATIONAL USES OF MUSIC

The not-for-profit exemptions of the 1909 copyright law covering music played in schools have been repealed. Educational institutions must be licensed to play copyrighted music where the performer is paid or an admission is charged, even if the admission is used to cover refreshment costs.

Emergency copying to replace purchased copies for which any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

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 section, 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.

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.

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.

A single copy of a sound recording (such as 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.

OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first 45 consecutive calendar days after date of recording. Upon conclusion of such 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 teaching activities, and repeated only once 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 10 consecutive days in the 45-day calendar day retention period. "School days" are school session days-not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions-within the 45-day retention period.

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

After the first 10 consecutive school days, off-air recordings may be used up to the end of the 45 calendar-day retention period only for teacher evaluation purposes.

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 copyright notice of the broadcast program as recorded.

Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

MICROCOMPUTER SOFTWARE

Public Law 96-517, which Congress passed in December 1980, amends the copyright law to grant the owner of a particular computer program the right to copy if, and only if, (1) such a copy is "an essential step in the utilization of the program in conjunction with a machine," or (2) the copy is for archival purposes only, i.e., to serve as a back-up in case the original is lost or destroyed.

A school may not purchase one copyrighted computer program and reproduce it in quantity for use with several computer systems without the permission of the copyright owner.

You may not network one computer program to multiple stations without obtaining a "networking license."

REFERENCES:

Federal Statutes

17 USC Section 107-108
17 USC Section 117

Other

General Guidelines to Copyright Act of 1976

BUREAU/OFFICE CONTACT:

Commonwealth Libraries
Division of School Library Media Services
Pennsylvania Department of Education
333 Market Street, 11th Floor
Harrisburg, PA 17126-0333
Phone: (717) 787-6704 Phone: 717.783.3750
TDD: 717.783.8445
Fax: 717.214.4389