POLICY 771

 COPYRIGHT

Big Foot Area Schools Association

Section E: Support Services

Big Foot High School, Reek Policy Code: EGAA

Walworth/Fontana/Sharon Code:

**COPYRIGHT POLICY**

It is the policy of the Big Foot Area Schools Consortium that students and staff will comply with Federal Copyright Law. This policy provides general guidelines for compliance with the Federal Copyright Law, but is not intended to be all-inclusive of the rules that apply under the law.

**GENERAL REQUIREMENTS -**

• Making unauthorized copies of copyrighted materials instead of purchasing that material in violation of the copyright law is prohibited.

• Except under the “Fair Use” rule, copying, performing, or transmitting copyrighted materials without permission from the copyright holder is prohibited.

• Individuals who violate the copyright law are liable for their own actions and may be subject to disciplinary employment consequences.

**LIMITATIONS ON EXCLUSIVE RIGHTS: FAIR USE -**

Many provisions of the federal copyright law affect the educational uses of copyrighted materials, but the most generally applicable is Section 107 - Fair Use. “Fair Use” applies four basic standards that must be considered together when judging whether or not there has been a copyright infringement:

1. The purpose and character of use. (Is the copying being done for commercial or educational purposes?)

2. The nature of the copyrighted work. (Was the original work intended to be consumable, for example?)

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. (How much is being copied? How important is the copied part to the entire work? How many copies are being made?)

4. The effect on the potential market for or value of the work. (Will the copyright

owner suffer financial loss?)

**SPECIFIC COPYRIGHT GUIDELINES FOR INSTRUCTIONAL MATERIALS**

**Print**

According to the concept of "Fair Use" as outlined above, a single copy of any of the following may be made by or at the individual request of a staff member for research or use in teaching:

* A chapter from a book.
* An article from a periodical or newspaper.
* A short story, short essay, or short poem, whether or not from a collective work.
* A chart, graph, diagram, drawing cartoon or picture from a book, periodical or newspaper.

Multiple copies (not to exceed more than one copy per student) may be made by or at the request of an individual staff member for classroom use, where each copy must include the notice of copyright present in the original work, provided that:

* Copying meets the tests of “brevity and spontaneity and cumulative effect.”
* 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.

* Spontaneity: Time does not allow for purchasing the material or obtaining permission where 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.
* 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. The numerical limitations set forth above do not apply to current news periodicals, newspapers and current news sections of other periodicals.

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

* Copying of or from works intended to be "consumable" (workbooks, exercises, standardized tests, answer sheets, other consumable materials).
* Copying to create or replace anthologies.
* Copying to substitute for the purchase of materials.
* Copying directed by a higher authority.
* Repeated copying of the same item by the same staff member from term to term.
* More than nine instances of such multiple copying from one course during one class term.

The regulations governing the copyright guidelines are not comprehensive and do not absolve the staff from complying with all aspects of the law.

**Video Recordings, Audiovisual Materials, and Other Non-Print Material**

A type of “fair use” exemption for the performance or display of non-print material applies, but is somewhat different. A teacher may use copyrighted non-print material in a classroom including but not limited to videotapes (whether purchased or rented), DVDs, laserdiscs, film, filmstrips and slide programs in the classroom, if all four of the following criteria are met:

1. The performance or display must be of a legal copy of the work;

2. The performance must occur in the course of face-to-face teaching activities directly

related to the curriculum;

3. The performance must take place in a classroom or similar place of instruction, in a

non-profit educational institution; and

4. The performance or display must be presented by instructors or pupils in the class.

Videos may only be performed or displayed for classroom use when a copy is legally obtained from agencies or companies which allow for such use, such as the use of movies covered by a Movie Licensing USA agreement providing a Public Performance Site License. Many retail video rental stores have strict license agreements prohibiting use with large, non-home audiences. However, the “home use only” label does not restrict a school from using the video when the above four criteria are met. Classroom or school- wide use of audiovisual work for entertainment or reward is specifically prohibited. These restrictions may also apply to the use of videos purchased for home use. Staff are expected to review and honor these agreements.

There are more limitations when a teacher wants to transmit copyrighted non-print material in a setting that does not occur in a face-to-face teacher and student activity, such as distance education. In any situation in which the transmission of material does not occur in face-to-face teacher student activity, transmissions of performance and display material is permitted for: (1) all non-dramatic literary or music work; examples include an audiovisual of the performance of a poem or short story teaching, all music other than opera, music videos, and musicals; (2) reasonable and limited portions of any other performance such as films and videos of all types and any dramatic musical works excluded above; and (3) display of any work in amounts comparable to typical face-to- face displays such as still images of all kinds.

The performance or display of these materials must be a regular part of the mediated instructional activity and technologically limited to students enrolled in the class. Notice must be given that the material may be protected by copyright. Technological measures must be applied that reasonably prevent recipients from retaining the works beyond the class session and further distributing them.

Prohibited uses of copyrighted non-print material in any situation in which the transmission of the material does not occur in face-to-face teacher and student interactions include (1) works primarily produced or marketed for in-class use in the digital distance education market; (2) works the employee knows or has reason to believe were not lawfully made or acquired; and (3) textbooks, course packages and other materials typically purchased by students individually and materials a teacher would want a student to study or view on their own time outside of class.

Copies of any of the following video recordings may be made by or at the individual request of a staff member for classroom use:

* “In house” productions or materials that are not prohibited by a copyright.
* Copyrighted performances when used as part of a teaching activity in a classroom or instructional setting, which may be broadcast if the performance or display is (1) a regular part of the instructional activities; (2) of material assistance to the teaching content; and (3) transmitted primarily for reception in classrooms or similar instructional places, by persons with disabilities, or by an officer or employees in the school district as part of their official duties.
* Works that are not copyrighted or works in the public domain.
* Copies made under “permission to copy” arrangements.

**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 the 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 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) 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.

Copying of broadcasts on commercial and public radio, except for copyrighted musical selections, is permitted under the same rules that apply to off-air taping of broadcast programs; however, there is no special provision allowing libraries to tape radio news programs. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

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

* Copying from premium, encrypted channels (HBO, The Disney Channel, Showtime, Cinemax, etc.) or non-broadcast channels (ESPN, MTV, Nickelodeon, Arts and Entertainment, etc.)
* Duplicating copyrighted video recording and other non-print materials.
* Copying from one format to another.
* Copying off-air programs for the purpose of entertainment or reward.

The Regulations governing the copyright guidelines are not comprehensive and do not absolve the staff from complying with all aspects of the law.

**Computer Software**

Section 7(b) of Public Law 96-517 grants to the purchaser the right to copy a program if and only if:

* Such copy is an essential step in the utilization of the program in conjunction with a machine.
* The copy is for archival purchase.

The following computer software may also be copied by or at the individual request of a staff member for classroom use:

* “In-house” productions or material that are not prohibited by a copyright.
* Works that are not copyrighted or in the public domain.

Notwithstanding the above, the following shall be prohibited:

* Copying copyrighted programs on district equipment.
* Using illegal copies of copyrighted programs on district equipment.
* Purchasing programs designed primarily as “break and entry” tools with district, state, or federal funds.
* Booting single copies of copyrighted programs into more than one machine without authorization from the copyright holder.
* Using “archival” copies of software as additional copies.
* Transmitting software files.

Staff members shall also adhere to state law provisions concerning the copying of data, computer programs, or supporting documentation.

The copyright infringement information may not be removed from the protected works, including software. All computer software copyright records shall be retained. Software circulated by the library shall contain appropriate warning stickers regarding copyright restrictions and the licensing terms shall be circulated with the software package.

The District shall designate an Agent to receive notifications of claimed infringement and make information readily available through its computer service, including on its website, in a location accessible to the public. The information consists of providing the name, address, phone number, and electronic mail address of the Agent. The District shall respond expeditiously to remove or disable access to copyright material installed on the District’s computer by a student or employee without the District’s knowledge when it becomes aware of such infringing activity.

The regulations governing the copyrighted guidelines are not comprehensive and do not absolve the staff from complying with all aspects of the law.

**Music**

The “Fair Use” criteria outlined above and the guidelines under “fair use” for music should be applied to each intended use before copying any copyrighted music or musical works.

Permissible use includes:

* Emergency copying to replace purchased copies which are unavailable for an imminent performance.
* Making copies of excerpts of works of not more than 10% of a printed musical work for academic purposes other than performance.
* Editing or simplifying purchased work provided that the fundamental character of the work is not changed.
* Making a single copy recording of a student performance when it is made for the purposes of evaluation or rehearsal.
* Making a single copy of a copyrighted sound recording owned by the school or the individual teacher for the purpose of an aural exercise or examination.

Notwithstanding the above, the following shall be prohibited:

* Copying to create or replace anthologies.
* Copying of or from works intended to be consumable.
* Copying for the purpose of performance.
* Copying to substitute for the purchase of materials.

The regulations governing the copyright guidelines are not comprehensive and do not absolve the staff from complying with all aspects of the law.

**Libraries**

According to the provisions of Section 108 of the copyright law (Public Law 94-553, Title 17), a library or any of its employees acting within the scope of their employment may reproduce a single copy of print works and records under specific circumstances:

* Purposes of preservation.
* Purposes of private study, scholarship, or research.
* Purposes of interlibrary loan.

If loaning a copy of material by fax, the copy used to send the fax must be destroyed. It may not be kept for a reference file or vertical file.

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

* Copying for direct or indirect commercial advantage.
* The systematic reproduction for distribution of single or multiple copies.
* Copying to substitute for a subscription to a work or the purchase of a work.

The provisions under Section 108 do not apply to musical, pictorial, graphic, sculptural, motion picture, or audiovisual works.

Copies made under the proviso of Section 108 for interlibrary loan must include the notice of copyright.

A library that requests reproductions of print or records via interlibrary loan must make certain that its requests conform to the national Commission on New Technological Uses of Copyrighted Works (CONTU) guidelines and must maintain records of it requests for the required number of years.

Libraries must display prominently, and the place where orders for reproductions are accepted, a warning that copying will be done in accordance with the copyright law. Reproducing equipment located on the premises must display the proper notice that the making of a copy may be subject to the copyright law.

**MultiMedia Programs**

Teacher or student-developed MultiMedia programs of incorporated copyrighted program material may be used for classroom purposes only. The following guidelines are in place for such programs:

* Illustrations and Photographs may use up to 10% or 15 images (whichever is less)
* Numerical Data Sets may use up to 10% or 2500 fields or cell entries (whichever is less)
* Music, Lyrics, & Music Video may use up 10% or 30 seconds of an individual work (whichever is less)
* Motion Materials may use up to 10% or 3 minutes (whichever is less)
* Text Materials may use up to 10% or 1,000 words (whichever is less)

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the instructional classroom-based purposes.

Teachers may use their educational multimedia projects created for educational purposes for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may keep lawfully acquired copyrighted materials in multimedia programs created for educational purposes indefinitely for such uses as seeking employment or applying for graduate school.

**Permission to Copy**

If a question exists as to whether a particular act of copying might be in violation of the copyright law, it is prudent to request permission from the copyright holder. A copy of each request must be kept on file in the appropriate school media center. The request should include the following information:

1. Title, author(s), editor(s), or distributors(s)

2. Edition, copyright and/or production year

3. Each amount of material to be used (lines, running time, etc.)

4. Reference to the initial contact individual, by name, in the letter if the initial contact

was made by phone

5. Nature of the use (how many times, when, and with whom the material will be

used)

6. Number of copies to be made

7. How the material will be reproduced

**Copyright Infringement**

Damages in copyright infringement cases can be quite high. The Copyright Law specifies a normal penalty of from $750 to $30,000 in statutory damages for each violation, but the penalty can be as much as $150,000 for willful violation. Even if a defendant is judged not to be in violation of the law, court costs and attorney’s fees must still be borne by the individual and/or organization charged with the copyright infringement.

Legal Reference: Sections 118.13

PI 9.03 of the Wisconsin Administrative Code

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