

**DESCRIPTOR TERM:****Instructional Program****Millard District Policy  
File Code: 5190****3<sup>rd</sup> Reading: 06-08-23****COPYRIGHTED MATERIALS**

Employees of the district shall comply with the provisions of the United States copyright law. Under that law, subject to certain specific exceptions, as stated below, the owner of a copyright has the exclusive rights to reproduce, distribute, perform, or display the copyrighted work, or to authorize such reproduction, distribution, performance, or display by others. Unless the use is permitted under the guidelines in this policy, district employees shall not copy or make use of copyrighted material without first obtaining the appropriate permissions from the copyright holder.

**A. Fair Use Exception**

An exception to the exclusive rights enjoyed by copyright owners is the doctrine of educational fair use. Under this exception, the fair use of a copyrighted work for purposes of teaching, scholarship, or research is not an infringement of copyright. In determining whether the fair use exception applies, the following factors are considered:

1. The purpose and character of the use, including whether the use is of a commercial nature or for non-profit educational purposes.
2. The nature of the copyrighted work.
3. The amount and importance 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.

*17 U.S.C. § 107*

District employees should use caution before making use of copyrighted material based only on application of these fair use factors, and should consult with District administration and/or District legal counsel before making such uses.

**B. Performances and Displays**

A further exception shall be performance or display of a work by instructors or students in the course of face-to-face teaching activities in a classroom or other similar place devoted to instruction.

**C. Fair Use Guidelines**

Employees who wish to use copyrighted print material, broadcast recordings, or music shall follow the fair use guidelines as set forth in this policy, which

establishes uses which will be considered fair use and are permitted. These guidelines establish a minimum guaranteed fair use, not a maximum. Any use that falls within those guidelines is a fair use; any use which exceeds these guidelines shall be judged by the four factors stated above and may be subject to challenge. Therefore, any uses beyond these guidelines should first be approved by District administration and/or legal counsel.

#### **D. Prohibitions**

Notwithstanding the fair use guidelines, the following shall be prohibited:

1. Copying of print materials and sheet music to create or replace or substitute for anthologies, compilations, or collective works. This prohibition against replacement or substitution applies whether copies of various works or excerpts are accumulated or reproduced and used separately.
2. Copying of or from works intended to be “consumable” in the course of study or teaching. These works include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.
3. Copying shall not substitute for the purchase of books, publishers’ reprints, or periodicals; be directed by higher authority; or be repeated with respect to the same item by the same teacher from term to term.
4. Students may not be charged any amount for copying which exceeds the actual cost of copying.

*Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals*

#### **E. Broadcast Programs Fair Use Guidelines**

Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a District school for a period not to exceed the first 45 consecutive calendar days after the date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed.
2. 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 during the first ten consecutive school days within the 45-calendar-day retention period. (“School days” are actual days of instruction, excluding examination periods.) The showing may be in classrooms within one building, cluster, or campus.
3. Off-air recordings shall be made at the request of and used by individual teachers and shall not be regularly recorded in anticipation of requests. No broadcast program shall be recorded off-air more than

once at the request of the same teacher, regardless of the number of times the program is broadcast.

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. (For example, when several teachers request recordings of the same program.) Each such additional copy shall be subject to all provisions governing the original recording. All copies of off-air recordings shall include the copyright notice on the broadcast program as recorded.
5. After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar-day retention period only to determine whether or not to purchase and include the program in the teaching curriculum and shall not be used in the District for student exhibition or any other non-evaluative purpose without authorization.
6. Off-air recordings need not be used in their entirety, but the recorded programs shall not be altered from their original content. Off-air recordings shall not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

*Guidelines for Off-air Recording of Broadcast Programming for Educational Purposes (House Report H.R. 97-495, p. 8-9)*

Some media providers (such as PBS or other entities) may have negotiated permissions allowing for educational use beyond these basic guidelines. With a written confirmation of such negotiated permissions, broadcast programs may be recorded and used in conformance with the extended permissions.

#### **F. Print Media Fair Use Guidelines**

Copyrighted print media may be used for instructional purposes as follows:

1. Single Copying for Teachers
  - a. 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:
    - i. A chapter from a book.
    - ii. An article from a periodical or newspaper.
    - iii. A short story, short essay, or short poem, whether or not from a collective work.
    - iv. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.
2. Multiple Copies for Classroom Use
  - a. Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:
    - i. The copying meets the tests of brevity and spontaneity as those are defined below; and

- ii. The copying meets the cumulative effect test as that is defined below; and
  - iii. Each copy includes a notice of copyright.
- b. Brevity. The test of brevity can be met as follows:
- i. Poetry:
    - (1) A complete poem if less than 250 words and if printed on not more than two pages; or,
    - (2) From a longer poem, an excerpt of not more than 250 words.
    - (3) These limits may be extended to permit the completion of an unfinished line of a poem.
  - ii. Prose (unless the work is a “Special” work as set out below):
    - (1) Either a complete article, story, or essay of less than 2,500 words; or,
    - (2) 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.
    - (3) These limits may be extended to permit the completion of an unfinished paragraph of prose.
  - iii. Illustration:
    - (1) One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
  - iv. “Special” works:
    - (1) 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. Despite the prose brevity guideline in paragraph “ii” above, such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.
- c. Spontaneity. The test of spontaneity can be met as follows:
- i. The copying is at the instance and inspiration of the individual teacher, and,
  - ii. 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.

- d. Cumulative Effect. The test of cumulative effect can be met as follows:
- i. The copying of the material is for only one course in the school in which the copies are made.
  - ii. 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.
  - iii. There shall not be more than nine instances of such multiple copying for one course during one class term.
  - iv. The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

*Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals*

#### **G. Music Fair Use Guidelines**

Copyrighted music may be used for instructional purposes as follows:

1. 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.
2. 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% of the whole work. The number of copies shall not exceed one copy per student.
3. 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.
4. 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.
5. 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.)