

Use of Copyrighted Material

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References: Education Code Sections 32360 and 67302; U. S. Code Title 17, Copyright Act 1976; U.S. Copyright Office; The TEACH (Technology, Education and Copyright Harmonization) Act; Copyright Act, Sections 110(2) and 112

Employees and students shall not use copyrighted materials in a way which violates one of the copyright owner’s exclusive rights without permission from the owner unless that use is allowed by the laws pertaining to fair use.

Definitions:

- (1) “Copyrighted materials” generally refers to "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work.
- (2) “Copyright owner’s exclusive rights” means the right to make a copy (reproduce), use a work as the basis for a new work (create a derivative work), electronically distribute or publish copies (distribute a work), publicly perform music, prose, poetry, a drama, or play a video or sound recording, etc. (publicly perform a work), and publicly display an image on a computer screen or otherwise (publicly display a work).
- (3) ”Permission from the owner” means obtaining the written permission (often in the form of one or more licenses) from the owner of the exclusive material you wish to use, in a form approved by the College.
- (4) “Laws pertaining to fair use” means 17 U.S.C. sections 107, 110(1), 110(2) and 112(b) and case law interpreting those statutes:

-17 U.S.C. Section 107, codifies the concept of fair use as an exception to copyright protection. A College employee’s or student’s use of one or more of the copyrighted

materials noted above, including multiple copies for classroom use, is within the fair use exemption (meaning that the employee or student use is not a copyright violation) if it is for the purpose of teaching, scholarship or research, the nature of the work suggests that fair use is appropriate, the amount of the use (the quantity of the work being used as measured against the amount needed to serve the educational objective) is appropriately limited, and the effect (negative impact) on any commercial market for the work is either nonexistent or minimal and justified.

-17 U.S.C. section 110(1) and (2), creates specific exemptions from copyright protection for (1) performance or display of a work in the course of face to face instruction in a classroom or similar place devoted to instruction, including motion pictures and other audio visual works, but only to the extent the copy being used was lawfully made; (2) digital transmission of a performance of a non dramatic literary or musical work, or a reasonable and limited portion of any other (i.e., dramatic) work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, so long as the copy being used was lawfully obtained, if (A) the performance or display is made by or at the direction of an instructor as an integral part of a class session offered as a regular part of a course of study; (B) the performance or display is directly related and supportive to the teaching of the content of the transmission; (C) the transmission (to the extent technologically feasible) is made solely for, and the reception is limited to students officially enrolled in that course, or to employees of the College; and (D) the College through this or other policies notifies employees and students about copyright laws, and for digital transmissions applies available technology to prevent (i) a recipient's retention of the work, for longer than the class session, (ii) unauthorized further dissemination by a recipient; and (iii) College interference with any technology used by copyright owners to prevent such retention or unauthorized further dissemination.

-17 U.S.C. §112(b), authorizes the College, through an instructor who is making the digital transmission of his/her teaching materials authorized by Section 110(2), to make no more than 30 copies of a particular transmission program embodying the copyrighted performance or display if no further copies are made from those 30, only one of the 30 is kept for archival purposes, and the other 29 are destroyed within seven years of the date of the transmission. Section 112 (f)(2) also authorizes the College, acting through an instructor who is using Section 110(2) to accomplish a digital transmission which includes copyrighted materials, to create the digital format he or she will transmit from an analog original if no digital version of the work is available, or the available digital version has technology embedded which prevents its use for a Section 110(2) purpose.

Distance Education: Depending upon how it is accomplished, distance education can fall within the above statutory exemptions from copyright protections. For instance, distance education consisting of closed circuit broadcasts of classroom instructional presentations, where all recipients are enrolled students, qualifies under the definition of "fair use". Distance education through digital (internet) transmission, the recipients are limited to enrolled students (as verified through, login passwords for instance) can fall within fair use and also be within the protection of 17 U.S.C. section 110(2) so long as

the copyrighted material is a non dramatic literary or musical work, or is only a reasonable and limited portion of a dramatic work, and the other conditions of that section are met.

PodCasts: A podcast is online audio content which is delivered via an RSS feed. Podcasts can be displayed on a website with a clickable link to an audio file. While you do not have to have an iPod to listen to a podcast, the concept was named based on using an Apple iPod © to download the audio feed from a personal computer, store it, and allow the user to listen to it at his/her leisure. Podcasts have the technological potential to exceed the criteria for digital distance education set forth in 17 U.S.C. section 110(2) where their residence on a website makes them susceptible to non-enrolled student use, re-use, and retransmission, outside the College's control. Where that is the case, the only copyright exemption available will be fair use under section 107.

Online Courses: The Teach Act provides instructors greater flexibility to use third party copyrighted works in online courses. An individual assessment will be required to determine whether a given use is protected under the Act. The following criteria are generally required:

The online instruction is mediated by an instructor.

The transmission of the material is limited to receipt by students enrolled in the course. Technical safeguards are used to prevent retention of the transmission for longer than the class session.

The performance is either of a non-dramatic work or a "reasonable and limited portion" of any other work that is comparable to that displayed in a live classroom session.

The work is not a textbook, course pack, or other material typically purchased or acquired by students for their independent use and retention, including commercial works that are sold or licensed for the purposes of digital distance education.

The District does not know, or have reason to know, that the copy of the work was not lawfully made or acquired.

The District notifies students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

Use of Music: The extent of fair use and other exemptions varies depending upon whether the use in question is of sheet music, a recording of a performance, or some variation.

Sheet music: Permissible uses include emergency copying to replace purchased copies that for any reason are not available for an imminent performance. For academic purposes other than performance, multiple copies of excerpts of works may be made provided that the excerpts do not constitute a part of the whole which is greater than 10% or a performable unit (a section, aria, or movement). Permissible use also includes making a single copy of an entire section, movement or aria, which is confirmed by the proprietor to be out of print, or unavailable except in a larger work in which case the instructor can make a single copy for use in research or in preparation to teach a class. Printed copies, which have been purchased may be edited or simplified provided that the fundamental

character of the work is not distorted, the lyrics (if any) are not altered, and no lyrics are added if none exist in the original.

Recordings of Performances: A single copy of a performance recording by students may be made for evaluation or rehearsal purposes, and may be retained by the instructor. A single copy of a sound recording of copyrighted music may be made from a sound recording owned by the College or instructor for the purpose of constructing classroom teaching or examinations, and may be retained by the instructor or College. In distance education, the instructor can only use clips (“reasonable and limited portions”) of copyrighted recorded performances of audio visual and dramatic musical works.