

INSTRUCTIONElementary and SecondaryD.C. EVEREST MEDIA PROGRAM COPYRIGHT POLICY

It shall be the policy of the D. C. Everest School District to comply with the 1976 copyright law (Title 17 U.S. Code). This latest revision of the copyright law seeks to provide a balance between the rights of copyright holders and the rights of users of copyrighted materials. To be able to intelligently comply with the provisions of this law, all D.C. Everest school employees should be aware of the following information.

Definition of Copyright:

A copyright is a type of protection granted by federal law to the authors of literary, musical, artistic, dramatic and other types of intellectual works. The copyright owner is given certain exclusive, although not unlimited rights to his works. He has the right to print, reprint or copy the works; to sell or distribute copies, to perform the work, to display the work, etc.

Copyright is granted to certain types of works which appear in tangible form. Copyrights may be obtained for the following:

1. Literary works
2. Musical works including any accompanying words
3. Dramatic works including any accompanying music
4. Pantomimes and choreographic works
5. Pictorial, graphic and sculptural works
6. 16mm films, videotapes and other audiovisual works
7. Recordings
8. Computer software (programs)

Copyrights are not granted for ideas, processes, concepts or other intangible entities regardless of the manner in which they are set forth.

A work is protected by copyright law from the moment of its creation, but the work must be registered with the U. S. Copyright Office before the author's rights may be enforced in the courts. Copyrights are granted for a set number of years after which the work becomes part of the public domain and may be used by anyone.

Sections of the Law:

Although the copyright law contains 810 sections, two are of special importance to the staff. Section 107 deals with limitations on the exclusive rights in copyrighted works and the doctrine of "fair use". Section 108 considers the reproduction of copyrighted works by libraries and archives.

## Section 107 or "Fair Use"

Although Section 107 deals with the concept of "fair use," the exact definition of the concept is elusive, "fair use" is generally considered to be copying which is allowed without permission from or payment to the copyright holder as long as the use is reasonable and not harmful to the rights of the copyright owner. Because the 1909 copyright law made no provision for any kind of copying, "fair use" has long been recognized by the courts as a limitation on the exclusive rights of copyright owners.

Section 107 considers the following purposes to be fair use of copyrighted "fair use" of any copyrighted materials:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The nature and substantiality 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

All four factors must be weighed and found to be positive before "fair use" is satisfied.

"Fair Use" Guidelines:

To aid in determination of "fair use," two sets of guidelines have been developed. These statements, "Guidelines for Classroom Copying in Not-For-Profit Educational Institutions" and "Guidelines for Educational Uses of Music" are not part of the law but will provide additional direction in determining "fair use."

"Guidelines for Classroom Copying in Not-For-Profit Educational Institutions," found in Appendix I, emphasizes that three standards must be considered in its use: brevity, spontaneity and cumulative effect. To determine brevity, the guidelines provide quantitative amounts of what may be considered minimum fair use. Different measures apply according to the format of the work. Spontaneity requires that the copying be "at the instance and inspiration" of the teacher without enough time to request and receive permission to copy from the author. Cumulative effect means that the copying is limited in quantity by the guidelines and is not used as a substitute for school purchases.

"Guidelines for Educational Uses of Music" sets limits for copying sheet music and recordings. The text of these guidelines may be found in Appendix II.

#### Section 108:

Section 108 authorizes other types of library copying which may not fall under "fair use" in Section 107. It is not an infringement of copyright if libraries or archives reproduce or distribute no more than one copy of a work if:

1. The reproduction is not made for direct or indirect commercial advantage
2. The library or archive collections are open to the public and to researchers
3. The reproduction has a notice of copyright

Section 108 permits the making of:

- a. A single copy of an entire unpublished work for the purpose of preservation, security or research
- b. A single replacement copy of an entire work if the work was damaged, stolen or is out-of-print and cannot be replaced at a fair price
- c. A single copy of a single article or excerpt from the library's own collection provided it is for private study or research
- d. A single copy of an article or excerpt through interlibrary loan copying provided the following conditions are met:
  1. The copy will belong to the patron
  2. The copy is for private study or research
  3. The library provides the required warning notices of copyright
  4. The requests are not in such quantity to substitute for the requesting library's own purchase

Audio Visual Works (Slides, Filmstrips, Cassettes, Records, Computer Programs, etc.):

The four "fair use" criteria should be applied for each intended use; and after one use, copyright clearance should be sought from the copyright holder.

#### Off-Air Taping:

Under a "Joint Policy on School Rerecording of Public and Instructional Television Programs," the Public Broadcasting System, the Agency for Instructional Television and the Great Plains National Instructional Television Library will permit schools to tape the majority of their programs for in-school use for a seven day period after local broadcast. Those programs where taping is prohibited will be listed in notices sent from educational channels to schools. The publication, Parade of Programs, lists rerecording rights for many instructional programs on WHRM Radio (90.9 AM) and WHRM Television (channel 20).

The Copyright Act grants to a copyright owner of a videotape the exclusive right to reproduce, distribute, perform, or display the work. Notwithstanding these exclusive rights, a teacher is permitted to display a videotape "in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction," provided the videotape has been "lawfully made."

The Copyright Act attempted to balance protection of the intellectual property rights of a copyright owner with the educational interests of teachers and students. Two concepts are important for the teacher to understand in using videotapes in order to avoid Copyright Act violations: "lawfully made" copy and "face-to-face" teaching activities.

1. Lawfully made copy--For purposes of classroom use of videotapes, the Copyright Act looks at how the videotape copy being used by a teacher came into being rather than who actually owns the videotape. A teacher who makes his or her own copy of a videotape owned by another person or a copy of a rental tape would not have a lawfully made copy, unless permission to make and use such a copy had first been secured from the copyright owner. Even if someone other than the teacher made the unlawful copy, a teacher could still not use it in the classroom if she or she had reason to believe the copy had not been lawfully made. Videotapes owned or rented by a teacher can be used in face-to-face teaching, provided they have been lawfully made.

The more usual off-the-air taping of commercial programs by a teacher or other school employee for classroom use is governed by guidelines drawn up by a committee of educators and television broadcasters in 1981. The guidelines provide that these videotaped recordings (made at home or school) may:

1. Be kept for up to 45 days after the recording date, at which time they must be erased; and
  2. Be shown to students only within the first 10 days of the 45-day retention period.
2. Face-to-face teaching--Unless otherwise permitted by the copyright owner, a videotape must be used in a classroom setting as part of an instructional activity. In other words, the use of a videotape in a classroom solely for entertainment purposes or the use of a videotape for a group of students in other than a face-to-face teaching setting would not fit within this category.

#### Required Notices of Copyright:

The following notices are required under the copyright law:

1. All copies of material must be labeled with a notice of copyright as follows: Notice: This material may be protected by copyright law (Title 17 U. S. Code).
2. Notices must be posted at unsupervised reproduction equipment in the library as follows: Notice: The copyright law of the U. S. (Title 17 U. S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using the equipment is liable for any infringement.
3. A notice must be posted in the area where requests for copies are accepted by the library staff as follows:

## WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17 U. S. Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research". If a user makes a request for or later uses a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

4. An "Order Warning of Copyright," identical to the above statement, must be printed on the forms used by patrons when requesting copies.

### Seeking Copyright Clearance:

The term "copyright clearance" refers to the process of seeking and receiving permission from a copyright owner in order to make a copy which would otherwise be considered as beyond "fair use." This permission may or may not involve payment of a fee.

A copyright clearance request letter should include the following information:

1. Title, author or editor and edition
2. Exact material to be copied with page or chapter numbers
3. Number of copies to be made
4. Use to be made of duplicated material
5. Form of distribution (classroom, newsletter, etc.)
6. Type of reproduction (slide, photocopy, etc.)
7. Whether the material is to be sold

Further suggestions for writing a copyright clearance letter include the following:

1. Include a blank for the publisher to fill in stating whether or not permission is granted, the conditions if any, an authorized signature and the date.
2. Make three copies of the letter, one for the media center's files and two to send to the publisher. One of these will be returned with the publisher's decision noted.
3. Include a self-addressed, stamped envelope with your request.
4. Send the request by registered mail when the response is crucial.

A form letter for seeking copyright clearance is found in Appendix III.

### Further Questions:

When a member of the staff has a question regarding copyright, queries should be directed to the building media specialist. If further information is necessary, Wisconsin Department of Public Instruction personnel will be contacted. To provide additional background information, the videotape, "Educational Awareness: The Copyright Law," can also be borrowed from the Wisconsin Department of Public Instruction.