



Butte-Glenn Community College District ADMINISTRATIVE PROCEDURE

AP 3750 – Use of Copyrighted Material

Approved by Leadership: January 2014

References: *U. S. Code Title 17, Copyright Act of 1976;*
The TEACH (Technology, Education and Copyright Harmonization) Act

Purpose

To provide guidelines for the use of copyrighted materials in compliance with federal law.

Facts and Definitions

Fair use is defined as the use of copyrighted materials for purposes of criticism, comment, news reporting, teaching, scholarship or research. This is not an infringement of copyright. The existence of such purpose is not, by itself, sufficient to sustain a claim that the use is fair. Specific facts to be considered are as follows: (17 USC, Section 107)

The purpose and character of the use, including whether it is of a commercial character or is for non-profit educational purposes;

- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the work as a whole;
- the effect of the use upon the potential market for, or value of, the copyrighted work.

Copyright notice consists of the following:

- The word "copyright", the abbreviation "copr.", or the symbol "©";
- the name of the copyright owner;
- the year of publication.

Computer programs are classified as "literary works." As such, they are covered under copyright protection (17 USC, section 101). Copyright extends to computer programs in source code as well as object code. Even though the copyright notice is not displayed, a computer program may still be under copyright protection.

Guidelines for Observing Copyright Protections

Single copies may be made of printed materials for purposes of criticism, comment, news reporting, teaching, scholarship or research as follows: (17 USC, Section 107)

- A chapter of a book;
- an article from a periodical or a newspaper;
- a short story, a short essay, or a short poem;

- a chart, a graph, a diagram, a drawing, a cartoon or a picture from a book, a periodical, or a newspaper;
- a single copy of an entire performable unit of music that is confirmed by the copyright owner to be out of print or that is unavailable except in a larger work, when made for academic purpose other than performance and solely for the teacher's research or class preparation.

Multiple copies, not to exceed one (1) copy per student, may be made for or by an instructor for classroom use, provided that:

Each copy carries the copyright notice;

- the copying is not used to substitute for the purchase of printed materials;
- the copying is not used to create or substitute for anthologies or other collective works;
- the copying is not from works described as "consumable" such as workbooks, standardized tests, test booklets, answer sheets, etc.; and
- the copying meets the tests for brevity, spontaneity, and cumulative effect.

Brevity:

- Poetry - A complete poem if less than 250 words or an excerpt of not more than 250 words.
- Prose - A complete article, story, or essay if less than 2,500 words or an excerpt from a longer work if not more than 1,000 words or 10 percent (10%) of the work.
- Illustration - One (1) chart, graph, diagram, drawing, or picture per book or periodical issue.
- Printed music - Excerpts of works for academic purposes other than performance, provided they do not compromise a performable unit such as selection, movement, or aria or exceed ten percent (10%) of the total work.

Spontaneity:

- The copying is at the inspiration of an individual instructor and not directed by a higher authority.
- The decision to use the work and the moment of maximum effectiveness are so close in time as to make it unreasonable to request permission for use.

Cumulative Effect:

- The copying is for only one (1) course and is not repeated by the same instructor from term to term.
- The copying does not exceed one (1) short poem, article, essay; two (2) excerpts from the same author; no more than three (3) excerpts from the same collective work during one (1) class term.
- Such multiple copying does not exceed nine (9) instances in one (1) class term.

The copying of printed music for purposes of performance is not allowed except that emergency copying may be done to replace purchased copies which are not available for an imminent performance, provided replacement copies are ordered promptly.

Reproductions by Libraries and Archives (17 USC, Section 108)

A library or its employees may reproduce not more than one (1) copy of a work or phonorecord, provided:

- The copy is made without any purpose of direct or indirect commercial advantage;
- the library is open to the public;
- the copy carries a notice of copyright;

- the copy carries the following warning: "This material may be protected by copyright laws (Title 17/US Codes)".

Archival reproduction permits a facsimile copy, solely for the purpose of preservation and security. This right extends to photographs, phonorecords, and motion pictures.

Replacement of damaged copy authorizes a facsimile copy of a published work solely for the purpose or replacement of a damaged, deteriorating, lost, or stolen copy if after a reasonable effort the library determines a replacement cannot be obtained at a fair price.

Articles and small excerpts are authorized to be copies of not more than one article or other contribution of a periodical or a small part of any copyrighted work if copied. This copy must become the property of the user. The library must display a warning that copies are made in accord with the regulations of the Register of Copyrights.

Out-of-print works may be copied if it is established that a copy cannot be found at a fair price, but every effort should be made to locate a copy. The copy must become the property of the user, and copies must display a warning that copies are made in accordance with the regulations of the Register of Copyright.

Making copies to fill interlibrary requests is not permitted if this copying is done in such "aggregate quantities as to substitute for a subscription to, or purchase of, such work". This phrase is interpreted to mean:

- requests within a calendar year for six (6) or more copies of an article or articles published within five (5) years in any given periodical;
- requests within a calendar year for a total of six (6) or more copies or phonorecords from any given work.

All requests must carry a representation from the requesting library that the request conforms to the guidelines.

District libraries will maintain records of all incoming and outgoing requests for three (3) calendar years.

Provisions Regarding Performances and Display

Performance or display of a work in the course of face-to-face teaching activities in a non-profit educational institution is not an infringement of copyright. (17 USC, Section 110)

Performance of non-dramatic literary or musical work transmitted by instructional broadcasting is not an infringement of copyright when:

- The performance is a regular part of instructional activities;
- the performance is directly related to the teaching content;
- the transmission is to classrooms, to disabled people unable to go to a classroom, or to officers and employees of governmental bodies as part of their official duties.

Slides, Video and Radio Tapes, Films, Sound Recordings, Dramatic Works, Pantomimes, etc.:

- A single copy of recordings of musical and dramatic performances by students may be made for evaluation and may be retained by the instructor.
- A single copy of a sound recording of copyrighted music may be made from sound recordings owned by the college or the instructor for the purpose of constructing aural exercises or examinations. (This pertains to copyrighted music and not to the copyright of the sound recording.)

Prohibited Uses:

- Staff shall comply with standard copyright uses. Displays and performances of audiovisual works are prohibited in nonprofit educational institutions when:

- They are used for entertainment, recreation, or even for their cultural or intellectual value but are unrelated to teaching activity.
- They are shown in an auditorium or stadium before an audience not confined to students, such as a sporting event, graduation ceremony, or community lecture or arts series.
- They involve an illegally-acquired or duplicated copy of the work.

Royalties:

- Under the Copyright Act of 1976 which repealed the not-for-profit exemption for performances of musical works, colleges and owners of facilities will be liable for royalty payments on all music played when the performer is compensated. In addition, institutions may also be liable for royalties on music performed either live or on record when there is an admission charge to the event.
- Executing music licensing agreements shall be the responsibility of each College and shall be administered by the office of the Vice President for Administration including the filing of reports as may be required by the licensing contracts.

Use of Copying Machines and Services

To eliminate District liability, all unsupervised copying machines shall be labeled with the following notice: "Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of (photo) copies of any copyrighted material. The person using this equipment is liable for any infringement".

The District may be held liable for infringement of copyrights resulting from copying performed in its staffed duplicating centers. Therefore, initial clearance authority for questionable requests for copies of copyrighted materials lies with the administrative head of the campus duplicating center. Decisions by this supervisor may be appealed by the faculty or staff member to the Vice President for Student Learning and Economic Development who shall make a final decision.

Guidelines for Using Computer Programs

A district employee shall observe copyright protection when using a computer program(s) whether a program bears a copyright mark or not, unless it is marked as a public domain program.

A district employee using a computer program purchased under a license agreement, shall read and follow conditions and restrictions stipulated in the license agreement. In general, the conditions and restrictions of the license agreement may stipulate the following:

- The computer program is covered by copyright; the original will be stored in the archive and the backup copy is used.
- A copy of the computer program is allowed only for archival purpose; the original will be stored in the archive, and the back-up copy is used.
- Modifications to the computer program are not allowed;
- Decompiling (i.e., reverse engineering) of the program code is not allowed without the permission of the copyright owner;
- Development of new works built upon the original work (derivative work) is not allowed without the permission of the copyright owner;
- Installation of the computer program is only allowed on a type of system (i.e., stand-alone or network server) and/or a specific computer(s).

A district employee shall not make a copy of a computer program for use other than as specifically permitted under the license agreement or a copyright protection. Lack of a copyright protection does not constitute permission to copy without the permission of the copyright owner. An exception is the PUBLIC DOMAIN program.

A district employee shall exercise caution in applying the "fair use" amendments to the copyright law that is intended to allow educational use of legally-protected products. For most computer programs, it is clearly illegal to make and distribute unauthorized, fully-functional copies to class members for their individual use. When the use of the computer program is in doubt, a district employee will check with the copyright owner or consult the appropriate District authorities before use.

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.

Computer and Network Use

See BP 3720 and AP 3720