Guidelines for School Use of Copyrighted Materials

What Is Copyright Law?

Copyright law provides authors of creative works with protections and rights over the works they create. Copyright extends to any literary, musical, dramatic, artistic, audiovisual, or architectural work, including computer programs and website content. (Copyright Law Sec. 102) For a work to qualify for copyright protection it does not matter whether it includes a copyright notice, whether it is distributed in a printed, physical format or in a digital format via the Internet, or even whether it is published or unpublished– copyright protection goes into effect as soon as pen is set to paper, fingers are touched to keyboard, or the record button is pressed. Copyright gives creators exclusive rights to determine how their work is reproduced, distributed, performed, displayed, or transmitted. (Copyright Law Sec. 106)

Because copyright applies to nearly all of the media resources that can be utilized by teachers and students in the classroom, it is important that teachers understand and follow copyright law so that they can provide the highest-quality resources to their students while respecting the legal rights of copyright holders. Educators also have the responsibility to lead their students by example and provide instruction in copyright law. Teachers should ensure that students are learning and applying good practices in regards to copyright as students use and create copyrighted materials.

All Granite School District employees and students should observe copyright law and respect the rights of copyright holders, including adhering to licensing agreements for software and electronic resources and making good faith efforts to stay within the bounds of fair use.

What Materials Can I Use in My Classroom?

As educators utilize media in association with their classroom instruction, they have numerous resources and options available that respect copyright law. These include:

1. Materials **purchased, licensed, or created for school use** by the school, district, or state.
2. Materials **created by the educator, purchased by the educator** or for which the educator has **obtained permission** from the copyright holder for classroom use.
3. Materials made available for use via a **Creative Commons** license or similar notice of permission.
4. Materials available in the **Public Domain**. These include works created by the United States government, works created before the advent of U.S. copyright law, and works of sufficient age that copyright protection has lapsed.
5. Materials made available on the **open web**, which by virtue of their free and public accessibility carry an "implied license" that would extend to most conventional classroom uses (Harper).
6. **Fair use** of materials without permission from the copyright holder, when the educator in good faith determines that his use falls within the factors defined in section 107 of U.S. copyright law.

Materials Purchased, Licensed, or Created for School Use

Purchased or legally obtained materials in your personal or classroom library.

Media Center – Your school's library media center has thousands of books and other materials – you can search through them on your school's Destiny site (http://destiny.graniteschools.org). Your school also may have school-level access to ebooks, databases, or other resources - check with your librarian, school technology specialist, or principal to find out about such resources.

SAFARI Montage – the district's brand new content management system – has thousands of videos and other digital resources that are all fully licensed and available for your use – more legally licensed resources will be added to it on a regular basis. Access SAFARI Montage at http://safari.graniteschools.org

District Curriculum Resources and Digital Textbooks – Access the district's curricular resources on the district web page at http://www.graniteschools.org/depart/teachinglearning/curriculuminstruction/Pages/default.aspx where you can find Curriculum Maps and web pages with resources for every subject area and grade level.

Pioneer Online Library - The materials held in the many databases of Utah's Pioneer Library (http://pioneer.uen.org) are already licensed and available for use in the classroom, including the videos housed in eMedia. Many of the Pioneer databases are also now simultaneously searchable through your school library's Destiny site, and many eMedia videos will also be available in Safari Montage.

Overdrive - For secondary teachers and students, there 1000+ Young Adult and Middle Grade e-books and audiobooks available for individual checkout through the district's Overdrive library (http://granite.lib.overdrive.com) – this is particularly great for students with their own mobile devices, or who desire to obtain a book to read on evenings, weekends, or vacation times when the school library is not accessible.

Public Libraries – Even more databases and resources are available through public libraries and their websites, such as the Salt Lake County Library System (http://slcolibrary.org/) and the Salt Lake City Public Library (http://slcpl.org/)

Creative Commons

Many creators of content now license their work through Creative Commons licenses, which explicitly tell users (including educators and students) what they are allowed to do with the work. Many Creative Commons licenses simply require attribution, and that any resulting work also is made available via a similar Creative Commons license. You can begin searching for Creative Commons materials at http://search.creativecommons.org/

Public Domain

Public Domain resources include government publications and anything that has fallen out of copyright due to age. Databases such as Project Gutenberg (http://www.gutenberg.org/), Open Library (http://openlibrary.org/), and the Internet Archive (http://archive.org/) are good places to start looking for electronic resources that are in the public domain, as they have already done the work in determining that the resource is in fact in the public domain or that, if under copyright protection, the material has been made available to the public by the copyright holder. This chart provided by Cornell University provides detailed current information if you need to determine whether a work has entered the Public Domain (http://copyright.cornell.edu/resources/publicdomain.cfm)

Open Web

Web pages and resources, like all other creative works, are protected by copyright law, whether specifically labeled as copyrighted or not. However, because of the free and public accessibility of web pages, most anything published on the open web carries with it an implied license for sharing, printing, quoting and most any other use that falls within usual classroom activities. As always, attribution should be given to the creators. However, finding something on the open web is not a golden ticket - you should never use any web resource that you suspect is itself a copyright infringement or pirated resource.

It is beyond the scope of this document to list or describe the vast number of classroom-applicable web resources. Many technology specialists, librarians, and teachers in Granite School District curate web pages with links to excellent online resources for classroom use. Work with your librarian or school technology specialist to discover and share good web resources.

Fair Use

Fair use is a provision of copyright law that places limits on the exclusive rights of copyright holders. Fair use is particularly applicable to teachers and students, as it allows copyrighted materials to be used and reproduced for purposes "such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research." (Copyright Law Sec. 107) The fair use section does not detail specific limits on usage or comment on specific situations; rather, it provides four general factors to consider in determining whether an individual use of a copyrighted material qualifies as a fair use. The four factors of consideration are:

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 **amount** and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the **effect** of the use upon the potential market for or value of the copyrighted work.

By legislative design, these four factors of fair use provide great flexibility so that they can be applied individually to diverse and unforeseen scenarios. Whenever an educator is considering using a copyrighted resource in the classroom without license or permission, he should specifically consider the application of these four factors to his intended use before using the resource. The criteria weighing for or against fair use will differ for each possible usage.

The flexibility of fair use sometimes causes confusion and frustration for educators, but it should actually be viewed as empowering: the law is designed in such a way that when an educator critically examines his potential use and determines in good faith that his use is a fair use, he has very little left to worry about. Copyright law provides protection for educators who have made a good faith judgment of fair use: an educator working for a nonprofit institution who "believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107" is not held liable (nor is his institution) for remunerations and damages associated with copyright infringement, even if the use is ultimately found in a court of law to be an infringement of copyright. (Copyright Act Section 504c, Crews 679) Furthermore, it is extremely rare for copyright holders to take any legal action against educators who have used copyrighted materials in good faith for educational purposes. Before taking legal action, copyright holders will usually send a threatening "cease and desist" letter demanding an end to the alleged copyright violation. Receiving such a letter does not necessarily mean that the claims of infringement are legitimate or that a lawsuit will be filed. (Center for Social Media)

Obtain Permission

If you plan to use a resource that is not accessible or available in any of the above ways, you should obtain permission from the copyright holder to reproduce it for educational purposes. The Copyright Clearance Center (http://copyright.com) is a vendor that provides centralized clearance services on behalf of many copyright holders.

Works Cited and Additional Resources

Center for Social Media. "The Code of Best Practices in Fair Use for Media Literacy Education." Washington, D.C.: American University School of Communication, 2012. Web. Aug 31 2012.

Copyright Law of the United States of America. Washington, D.C.: U.S. Copyright Office. Web. 19 Jul 2012.

Crews, Kenneth D. "The Law of Fair Use and the Illusion of Fair-Use Guidelines." *Ohio State Law Journal* Vol. 62 2001: 599-702. Web. 31 Aug 2012.

Crews, Kenneth D. and Dwayne K. Buttler. "Fair Use Checklist." New York, NY: Columbia University Copyright Advisory Office, 2011. Web. 31 Aug 2012.

Harper, Georgia K. *The Copyright Crash Course.* Austin, TX: University of Texas Libraries. Web. 31 Aug 2012.

United States Copyright Office. "Circular 1: Copyright Basics." Washington, D.C.: U.S. Copyright Office, May 2012. Web. 19 Jul 2012.

United States Copyright Office. "Circular 21: Reproduction of Copyrighted Works by Educators and Librarians." Washington, DC: U.S. Copyright Office, Nov 2009. Web. 19 Jul 2012.

Fair Use Checklist

Keeping a copy of a filled out checklist serves as excellent evidence that your fair use determination was made in good faith, in the rare case that your use is called into question.

Name _____ Date _____

School or Department _____ Class _____

Lesson / Project _____

Work(s) to be used_____

The Fair Use Checklist is a tool to assist you in determining whether your intended use of copyrighted materials without permission of the copyright holder is a fair use. This checklist need only be consulted if the material you intend to use is not purchased, licensed or otherwise made available for your use through a creative commons license, the public domain, or an implied open web license.

It is organized by the four factors of fair use set forth in Section 107 of the U.S. Copyright law. Below each factor are listed more specific criteria favoring and opposing fair use, taken from comments and interpretations made by Congress and the courts. It is not simply a scorecard in which you count up checks in each column and determine a winner. Rather, the checklist provides a quick exercise that causes you to think through the details of your proposed use and how that use weighs overall with respect to the factors. Having gone through the exercise, you will likely come to a determination as to whether your intended use is fair. You can then proceed with your use or else revise your plans to make your use fair.

1. Purpose

Favoring Fair Use

□ Teaching (including multiple copies for classroom use)
□ Research
□ Scholarship
□ Nonprofit educational institution
□ Criticism
□ Comment
□ News Reporting
□ Transformative or productive use (changes the work for new utility)
□ Parody
□ Restricted access (to current students, classroom, other limited group)

Opposing Fair Use

□ Commercial activity
□ Profiting from the use
□ Entertainment
□ Bad-faith behavior
□ Non-transformative, exact copy
□ Denying credit to the original author

2. Nature

Favoring Fair Use

☐ Published Work
☐ Factual or nonfiction based
☐ Important to favored educational objectives

Opposing Fair Use

☐ Unpublished work
☐ Highly creative work (art, music, novels, films, plays)
☐ Consumable work (workbooks, tests)

3. Amount

Favoring Fair Use

☐ Small quantity (such as a single chapter or article, less than 10% of work)
☐ Portion used is not central or significant to entire work
☐ Amount is appropriate for favored educational purpose

Opposing Fair Use

☐ Large portion or whole work used
☐ Portion used is central to or "heart of the work"
☐ Portion used is more than is necessary for educational purpose

4. Effect

Favoring Fair Use

☐ User owns lawfully purchased or acquired copy of original work
☐ One or few copies made
☐ No significant effect on the market or potential market for copyrighted work
☐ No similar product marketed by the copyright holder
☐ Lack of licensing mechanism or no longer in print
☐ Spontaneous or one-time use (not enough time to obtain permission)

Opposing Fair Use

☐ Could replace sale of copyrighted work
☐ Significantly impairs market or potential market for copyrighted work or derivative
☐ Reasonably available licensing mechanism for use of the copyrighted work
☐ Affordable permission available for using work
☐ You made it accessible on the Web or in other public forum
☐ Repeated or long-term use

Notes

Adapted from the "Fair Use Checklist" initially created by Kenneth D. Crews (Columbia University) and Dwayne K. Buttler (University of Louisvile)