

## Administrative Procedures for Copyright Material (Attachment for Policy No. 814)

### Purpose

The purpose of these Administrative Procedures is to effectuate Policy 814 - Copyright Material and provide concrete guidance to District staff and students about (1) what copyright is and (2) how to permissibly use copyrighted materials in the following situations:

- In-person classroom teaching;
- Online classroom teaching;
- School performances in music, theater, and dance;
- Creating reports, presentations, or curricular resources;
- Multimedia projects, such as videos, art, or podcasts;
- Making copies for people with disabilities; and
- Making copies for libraries and archives.

### Definitions

**Copyright:** A system of intellectual property that gives authors of creative works a bundle of exclusive rights over those works. Creative works include artistic works — like paintings, photographs, or sculptures — written music and sound recordings, audiovisual works, architectural plans and the architectural work itself, choreography, and written works, including computer programs.[1]

**Derivative works:** To make new works using or changing the medium of the copyrighted material in the original.[2]

**Exclusive Rights:** Copyright holders are the only people who can permissibly (1) make copies of the work; (2) to make new works using or changing the medium of the copyrighted material in the original; (3) to sell, rent, or lend copies of the work; (4) perform the work publicly (for sound recordings, this includes streaming it to be heard in a public place) and (5) to display the work publicly; unless another exception applies.[3]

**Fair Use:** This doctrine allows for certain uses of copyrighted materials without permission from the copyright holder, determined on a case-by-case basis by weighing the four factors codified in federal copyright law. Allowable uses typically promote artistic and scientific progress without infringing on the copyright owner's exclusive right to make money off the work.[4]

**Licensed:** A work is licensed when you have received permission from the copyright holder for your intended use of the work. Crediting the author is not the same as receiving permission to use the work. A license can be solicited — you have specifically sought out permission from the copyright holder to use their work for a specific purpose — or it can accompany the work, like Creative Commons licenses or open licenses.

**Public Domain:** A work is in the public domain when it no longer has any copyright protections. Works available in public spaces or on the internet are not necessarily in the public domain, and you should assume works you find on the internet are protected by copyright until you find evidence otherwise. Works that are in the public domain are free for anyone to use, copy, perform, record, or change. There is no complete list of works in the public domain, but many older dramatic and musical works will be public domain (e.g., original Shakespeare texts). All works produced by the U.S. federal government are public domain.[1]

**Public Performance:** Presenting a copyrighted work at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered. Examples include:

- film festivals
- meetings, programs, and events at schools or the Central Administration Office
- movie nights sponsored by student or other groups

Exceptions include:

- individual viewing
- home viewing with family and friends
- classroom viewing
- viewing in small groups, such as in a group study room

## **Procedures**

### I. Guidance for Fair Use Generally [4]

Under the fair use doctrine, uses of copyrighted materials without the explicit permission of the copyright holder are acceptable for such purposes as criticism, comment, news reporting, teaching, scholarship or research.

For the copying, altering, or use of a work to fall within the bounds of fair use, four (4) criteria must be met:

- Purpose And Character Of The Use* – The use must be for such purposes as teaching, scholarship, criticism, or comment, and the use should be nonprofit. Uses that critique or comment on the original work, such as parody, a critical review of a work, or
- Nature Of The Copyrighted Work* – Artistic, creative works such as paintings, plays, music, and poems are entitled to more creative protections than more factual-based works such as newspaper articles or news reports.
- Amount And Substantiality Of The Portion Used* – Copying or using a small portion of the work may be considered fair use; do not copy the entire work.
- Effect Of The Use Upon The Potential Market For Or Value Of The Copyrighted Work* – If resulting economic loss to the copyright holder can be shown, making even a single copy of certain materials may be an infringement; and making multiple copies presents the danger of greater penalties.

## II. Using Copyrighted Materials for Classroom Teaching

Teachers should use high-quality materials that enhance student learning, but must balance this with respecting the rights of creators. Many copyrighted materials may be used in the classroom; however, restrictions may apply on use outside of the classroom or on duplication or posting online.

- Materials created by the educator or for which the educator has obtained permission from the copyright holder.
  - For example, a lesson plan you make yourself is acceptable to use.
- Materials purchased, licensed, or created for use by educators by the school, District, or State.
  - For example, if the school or District has purchased novels or movies and they are available in the school library, they are acceptable to use in the classroom.
  - Materials borrowed from the public library are also acceptable to use.
- Materials that indicate they are licensed for general educational use,
  - e.g., through a Creative Commons License or otherwise clear statement of the copyright holder.
- Materials that are in the public domain.
  - For example, a Dickinson poem.
- Uses of materials that meet the criteria outlined in “[Guidelines for Classroom Copying in Not-For-Profit Educational Institutions](#)” [5]

### A. Fair Use Guidance for Classroom Teaching

This Section will describe common use scenarios that arise when teachers or students use other’s works during face-to-face classroom instruction. Section V, below, covers scenarios when using others’ work to create new works while at school.

1. The widely accepted minimum standards for fair use for making copies of copyrighted works in education settings can be found in a document entitled “[Guidelines for Classroom Copying in Not-For-Profit Educational Institutions.](#)” [5]

#### KEY TAKEAWAYS:

- Do not create copies of individual works to create substitutes for collective works like anthologies or compilations.
- Do not copy works intended to be consumable like workbooks, tests and test booklets, answer sheets, etc.
- Do not give students copies without the copyright notice.

### B. Performing Dramatic or Musical Works in Classroom Settings for Instructional Purposes [6]

1. If, during normal in-person teaching activities, you will be performing or playing music for instructional purposes (e.g., reading a scene from a play for drama or English classes, practicing a song in music class, playing music to interpret the lyrics), you do not need a license.
2. Having a student play a song at an assembly during school hours, so long as it is not open to those outside the school community and will not be posted online for anyone to watch at home, is also permissible without a license.

C. Playing Videos or Audio in the Classroom and Instruction [6]

1. As long as you reasonably believe you are acquiring audio/video/images from a source that has appropriate copyright permissions itself, then neither you nor your students need permission from the source or the copyright holder to play/show/perform the materials in face-to-face classroom instruction.
2. However, most major streaming services, such as Netflix, Hulu, and Amazon Prime, **do not authorize** the use of their services for “public performance,” including use in classrooms, in their terms and conditions.  
[7]
  - a) To avoid violating these terms and conditions, do not use your personal streaming services account to play movies, music, or other content. You may use your personal account **only to stream content specifically licensed for educational use or public performance on these platforms**. For example, Netflix licenses [some of its documentaries](#) to be played in the classroom for educational purposes.
  - b) Do not make copies of any works used in face-to-face instruction, including making compilations or clips or recordings.

D. Special Considerations in Using Copyrighted Materials for Online Learning [8]

1. You may use copyrighted material for online learning much in the same way as discussed above. Specifically:
  - a) The work being played, performed or displayed can’t be sold for use as part of online learning courses (unless it is the material purchased and licensed by the District for use in online learning);
  - b) The copy must be from a source that has appropriate copyright permissions itself;
  - c) The work must be shown by the teacher, at the direction of the teacher, or under the teacher’s supervision as part of the course offered by the school;
  - d) It must be directly related to the course content;
  - e) The work is shown only to students in the course, to the extent technologically feasible;

- f) You must provide notice that the material is subject to copyright protections;
- g) You do not retain the work for longer than the class session; and
- h) You do not further copy or distribute the work.

### III. Using Copyrighted Materials in School Performances Outside of the Classroom

- A. You may perform all public domain or open licensed plays, music, dances, or speeches. Otherwise, except for as mentioned below, public performances of other works will require obtaining a license from the copyright holder.
  - 1. If you wish to take creative liberties and make changes to an existing dramatic work for a performance, such as swapping the gender of characters, changing the setting, or altering certain aspects of dialogue, this requires permission from the copyright holder. Therefore, you may want to consider producing a play that is already in the public domain.
- B. Exception for public non-dramatic music performances (e.g. band, orchestra, poetry slams) that will not be recorded or live-streamed by the District or school:  
[2][9]
  - 1. These performances may be open to the public, but may not be “transmitted” to other places.
  - 2. If a performance is going to be recorded so that parents can buy copies, or live streamed so people can watch it at home, then the District/school must obtain a license.
  - 3. If the performance is going to be recorded so that students can watch it in class and learn from it, or for archival purposes, and it won’t be shared more broadly, the performance would not require a license.
  - 4. You cannot charge admission, or the admission fees must only be used for production costs or educational purposes, and the copyright holder must not object to the performance (they need not be directly notified).
- C. Obtaining Performance Licenses
  - 1. If a work is not in the public domain or does not meet the exception outlined in II.B. above, then it will require a license.
    - a) Fees for licenses vary significantly depending on the nature of the work and the nature of the performance.
    - b) Not every work is available to be licensed: this is especially true of recent popular plays and musicals.
  - 2. Theater and Dramatic Musical Productions
    - a) Determine which play(s) you are interested in producing.
    - b) Determine which publishing house owns the rights to the play.
    - c) Determine if the play is available to be licensed (copyright holders may not license performances of especially recent and popular plays or musicals).
    - d) Contact the publishing house in writing with details of your request.

- e) The [American Association of Community Theater](#) has a guide to obtaining performance rights for plays and musicals. Note that royalty fees do not include the cost of scripts.
3. Music Performances not meeting Section B, above.
  - a) Determine which songs you are interested in performing.
  - b) Identify the songwriters, lyricists, and composers of the song. This is not always the same as the performer of a recorded song.
  - c) Search for the publishing house that own the rights to that particular song.
  - d) The [National Association for Music Educators \(NAfME\)](#) has detailed guides available on acquiring copying, performance, and recording licenses for music.
4. Each District
  - a) Legal: If you need to purchase the license and/or sign any documents to obtain the license, you should contact Office of General Counsel before signing any agreement. *See*, <https://www.philasd.org/generalcounsel/contact/>

- ★ Licensing timelines vary depending on the type of licenses acquired.
- ★ Licenses for plays or musicals are typically limited to the duration of a planned run: the number of times you plan to perform the play publicly determines the cost.
- ★ Music licenses often allow for longer terms.

#### IV. Using Copyrighted Materials in Curriculum Guides, Staff Training Materials, and Other Resources

It is also important to consider the use of copyrighted materials in our own District materials. For example, photos and other kinds of images are often useful for conveying information in curriculum guides or training materials (powerpoints about prevention and intervention; a guide to storing records; or diversity, equity, and inclusion training). Some of these materials may also be copyrighted.

##### A. Using Images

1. Okay to use:
  - a) You may use images you create yourself, such as making your own diagram explaining the relationship between different concepts or use photos you personally took.
  - b) You may also use images in the public domain or that are licensed for non-commercial use, e.g., images contained in the Creative Commons (*see* links in the “Resources” below).
2. Not okay to use unless license:[3]
  - a) A screenshot you take of a copyrighted website, online textbook page, etc.
  - b) “derivative work” as define above

- (1) Be sure that the license indicates you can make changes to the work

#### B. Linking to Copyrighted Materials such as Videos or Instructional Materials

1. Linking to properly copyrighted materials is permissible. [10] [11]
2. However, linking to materials that themselves violate copyright laws, such as pirated copies of movies or books, is a form of copyright infringement, so you must link only to the original source of the copyright or the properly licensed sources. [10][12]

#### V. Using Copyrighted Materials when Creating Videos, Art, or Other Multimedia Projects

Staff, teachers, and students, may want to create videos, art, podcasts, or other multimedia content as part of their work for the District or their studies. The District encourages this creativity and new ways of presenting information or ideas, and stresses that this can be done so long as the intellectual property rights of other creators is respected.

- ★ For works where a specific video clip, image, or sound is not necessary to the purpose, first look for Public Domain, Creative Commons or open-licensed works, and royalty-free music.
- ★ Youtube has an [Audio Library](#) to help creators identify royalty-free music and sound effects.
- ★ Be sure to follow the licensing requirements of any work you use, such as attribution or using the same creative commons license.

#### VI. Making Copies for Individuals with Disabilities

It is also generally permissible to convert previously published literary works to accessible formats for individuals with disabilities, like a read-aloud or Braille or increasing it to large font without the permission of the copyright holder. If you are unsure, please reach out to the Office of General Counsel for guidance.

These works cannot be reproduced in any other format, must display a statement saying that further reproduction or distribution in a different format is prohibited, and include a copyright notice. [13]

#### VII. District Copyright Work

The District alone owns the rights to any work developed by staff in the course and scope of employment. However, the District will not register copyrights for teacher made lesson plans in units of study.



Each District division is responsible for pursuing copyright registration for work, except as mentioned above, created under its auspices.

### **Maintenance Schedule**

These Administrative Procedures will be reviewed upon review of the Policy, or in the case of changes to federal copyright law or a triggering event.

### **Legal References**

1. 17 U.S.C. § 102
2. 17 U.S.C. § 101
3. 17 U.S.C. § 106
4. 17 U.S.C. § 107
5. “Guidelines for Classroom Copying in Not-For-Profit Educational Institutions” included in H. R. Rep. 94-1476 (1976).
6. 17 U.S.C. § 110 (1)
7. See <https://help.netflix.com/legal/termsofuse>, <https://www.hulu.com/terms>, [https://www.primevideo.com/help/ref=atv\\_hp\\_cnt?nodeId=202095500](https://www.primevideo.com/help/ref=atv_hp_cnt?nodeId=202095500). The terms of use state that licenses are granted for personal, private use only,
8. 17 U.S.C. § 110 (2)
9. 17 U.S.C. § 110 (4)
10. 17 U.S.C. § 512 (d)
11. Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146 (9th Cir. 2007)
12. Columbia Pictures Indus. v. Gary Fung, 710 F.3d 1020 (9th Cir. 2013)
13. 17 U.S.C. § 121

### **Related Information:**

#### General Copyright Information

[Cornell University Library’s Copyright 101 Guidelines for Classroom Copying in Not-For-Profit Educational Institutions](#)

#### Terms and Conditions for Common Classroom Content Sources

[Khan Academy Terms and Conditions](#)

[Netflix Terms of Use](#)

[Hulu Terms of Use](#)

[Amazon Prime Terms of Use](#)

#### Guides to Obtaining Licenses

[Copyright Crash Course](#) by Georgia Harper: [Obtaining Rights to produce a play or musical or use live music in performances](#)

[American Association of Community Theatre](#) (AACT)



[National Association for Music Education \(NAfME\)](#)

[BMI Licensing](#)

[ASCAP Licensing](#)

[Global Music Licensing](#)

[Musical Theatre International](#)

[AACT Play Sources](#)

[Copyright Clearance Center](#)

Creative Commons, Open Educational Resources, and Public Domain

[Creative Commons.org - A Guide to Creative Commons Licensing](#)

[Openverse \(Creative commons or public domain images\)](#)

[Library of Congress Free to Use and Reuse](#)

[Project Gutenberg](#)

[Open Educational Resources Commons](#)

[Youtube Audio Library](#)