



An Educator's Guide to Copyright

Revised Edition 2011



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**Londonderry School District**  
Library Media and Technology Services



**An Educator's Guide to Copyright**  
**Revised Edition**



This publication may be obtained from the:  
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Library Media and Technology Services  
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## An Educator's Guide to Copyright Revised Edition

### **INTRODUCTION**

The issue of copyright has been a confusing one for educators since the passage of a copyright law that became effective on January 1, 1978. Educators often duplicate or reproduce copyrighted material for instructional purposes and the law provides some latitude in terms of "Educator Rights" in order to accommodate a compelling interest by society in an educated population. However, the law also prohibits deliberate infringement by educators of the rights of the lawful copyright owner.

This guide has been developed in an effort to help clarify many of the situations that users encounter when dealing with the issue of copyright. It is a brief summary of what you should know (as an employee and as an educator) about copyright. It is by no means inclusive, nor will it always relate to particular instances and circumstances. However, it should serve to make clear what is expected of all staff members when using copyrighted materials.

Please contact staff if you need additional information or have any questions whatsoever about using copyrighted work. In the meantime, it is our sincere hope that this guide will serve to eliminate some of the guesswork.

### **ADMINISTRATIVE COUNCIL STATEMENT**

It is imperative that we, as professional educators, recognize the importance of the Copyright Law of the United States (Title 17, U.S. Code) and constantly guard against its infringement. It is our intent, as a public school district, to insure copyright law observance by all our employees.

### **SCHOOL BOARD POLICY**

The Londonderry School District adheres to the Copyright Law. This copyright handbook has been developed as a legal guideline for the reproduction and fair use of resources. The library media and technology staff is delegated the responsibility for the education of staff and students as to the observance of the law. Related Policy statements, administrative regulations and the like are provided in the Appendix section of this guide.



**GENERAL INFORMATION\***

- Effective Date of the Law: January 1, 1978 (with annual amendments)
- Length of Time Protected: Works copyrighted prior to 1978  
28 years and renewal of 67 years  
Works copyrighted in and after 1978:  
Life of the author plus 70 years  
(If joint authors, life + 70 years of surviving author)
- Works Eligible for Protection: Definition: Any tangible medium or expression, now known or later developed, which can be perceived, reproduced, or otherwise communicated, either with the aid of a machine or a device...#17 USC, Section 102(a)
- Author's Rights Protected: Author has exclusive rights to do/authorize
  1. Reproduction of work
  2. Prepare a derivative work based on copyrighted work
  3. Distribution of the work by public sale, transfer of ownership or by rental lease or lending
  4. Performance of the work publicly
  5. Display of the work publicly (#17 USC. Section 106)
- Liability: \$750.00 to \$30,000 per infringement.  
If proven that law broken by willful intent, statutory penalty may be raised to \$150,000. \$500.00 to \$250,000 per infringement and/or 1-5 years imprisonment if found guilty of willfully infringing the law for private or commercial gain.

**NOTE:** Court must waive statutory penalty of employee of a non-profit educational institution or library where the infringer can prove they believed they were operating under Fair Use interpretation. Does not eliminate the possibility of a civil suit...#17 USC, Section 504 (c) (1) (2)

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**FAIR USE**

Contrary to what most people believe, the copyright law was not enacted for the sole purpose of protecting an author's or producer's rights. Although the law most certainly seeks to provide a copyright holder with guaranteed rights, it also seeks to consider society's overall interest in accessing information and to have this information available for the public welfare. Insofar as this intent goes, provisions have been made within the law. Preeminent in these provisions is the doctrine of "Fair Use".

The factors used by the courts in determining whether certain use of copyrighted materials is fair use are:

1. The purpose and the character of the use (non-profit vs. commercial use).
2. The nature of the copyrighted work (informational vs. creative, general knowledge vs. specialized subject).
3. The amount and substantiality of portion used in relationship to the copyrighted work as a whole (proportion and significance or quantity and quality of what was copied).
4. The effect of the use upon the potential market for or value of the work (infringement on current or future sales).

**FAIR USE FACTORS/CRITERIA**

In addition to the Fair Use Doctrine as outlined above, courts have (over a period of years and in a variety of case histories) developed additional criteria to assist in determining whether fair use exists:

1. The Functional Use Test -  
Determination as to whether the material duplicated or reproduced is used in a significantly different way than the original version provides.
2. Productive Use Test –
  - a) Use of copyrighted material to produce a substantially new work.
  - b) Use of copyrighted material to produce a benefit for society.
3. Public Interest Factor –  
Determination as to whether the use of copyrighted material is truly needed for the public interest.
4. Availability Test –  
Determination as to whether distribution systems are readily available to access copyrighted material.



There are still other limitations to a copyright holder's rights and in some instances user exemptions are provided for within the scope of the Copyright Act. These limitations and exemptions will be cited and discussed elsewhere in this guide.

Fair use is an important and useful concept, however; caution and restraint must be the watchwords as it poses many challenges in its proper interpretation and application.

### **GUIDELINES**

Fair use, as a legal concept, provides the criteria for determining whether copyrighted work may or may not be used without securing the permission of the copyright holder.

However, there are several specific areas in which use is governed by additional statutory provisions and guidelines. These include:

1. Photocopying
  - A. Classroom
  - B. Library
2. Educational Use of Music
3. Off-Air Videotaping
4. Videotape –DVD
  - A. Rental
  - B. Purchase
  - C. License
5. Reproduction of Audio Visual Work
6. Computer Software

### **PHOTOCOPYING\***

The following guidelines for classroom and teacher photocopying were the result of activity by a committee of authors, publishers and educators who made their recommendations to Congress. The House, in House Report No. 94 – 1476, p. 68 – 70, endorsed the guidelines.

#### **Teacher/Classroom Photocopying**

You may reproduce single copies of the following:

1. A chapter of a book.
2. An article from a periodical or newspaper.
3. A short story, short essay or short poem, whether or not from a collective work.
4. A chart, graph, diagram, cartoon (see note) or picture from a book, periodical or newspaper.

Intent of the preceding: For scholarly research, teaching or preparation to teach a class.

**\*NOTE: Copyrighted, syndicated cartoon characters are not permitted to be reproduced, nor may copyrighted logos (sports team, products, etc.).**

You may reproduce multiple copies of the following:

1. A complete poem if less than 250 words and if printed on not more than two pages.
2. An excerpt from a long poem, but not to exceed 250 words.
3. A complete article, story or essay of less than 2,500 words or an excerpt, not more than 1000 words, from a larger printed work not to exceed 10% of the whole, whichever of the preceding is less.
4. One chart, graph, diagram, cartoon (see note) or picture per book or periodical Issue.
5. Special works combining prose, poetry and illustrations, but limited to no more than 10% of the total.
6. All preceding must bear the copyright notice.

**\*NOTE AGAIN: Copyrighted, syndicated cartoon characters may not be reproduced nor may copyrighted logos (sports teams, products, etc.).**

Limits to the preceding

1. Copying is made for one course only.
2. One work from a single author.
3. No more than three authors from a collective work.
4. No more than 9 instances of such multiple copying in one class term.
5. Copying shall not be used to create or replace or substitute for anthologies or collective works.
6. Copying of "consumable" works, i.e. workbooks, exercises, standardized tests, test booklets and answer sheets is absolutely prohibited.
7. Same item not reproduced term to term.
8. No charge to students beyond actual photocopying.

NOTE: The limitations cited above do not apply to current news periodicals, newspapers and current news sections of other periodicals. Multiple copies of these items may be made for classroom use as long as they are not reproduced from sources designed specifically for student's use, i.e....Scholastic Magazine.

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### **Library Photocopying**

Certain exemptions to the Copyright Law have been extended to libraries. However, within the exemptions are also limitations in regard to photocopying for individual patron use, reserve use and interlibrary loan. Library/media staff are aware of and observe these guidelines. They are able to consult with you on an individual basis to insure the guidelines are followed in servicing your needs. You will note that copyright warning notices have been displayed at the desk (if orders are taken) or near any walk-up copy stations advising patrons of the restrictions.

The main principle that libraries must observe insofar as providing photocopying services to patrons, while at the same time operating within the guidelines, is that all of the exemptions are provided only for isolated and unrelated reproduction on different occasions. Systematic, planned photocopying is strictly prohibited.

### **EDUCATIONAL USES OF MUSIC\***

The following guidelines were developed by a committee representing educators, publishers and producers and incorporated into the House Report of the 94th Congress. They have been accepted as the intent of the Fair Use (Section 107) of the Copyright Act as pertains to the educational uses of music (House Report, p. 71).

#### Permissible Uses

1. Emergency copying to replace purchased copies, which, for any reason are not available, for an imminent performance provided purchased replacement copies shall be substituted in due course.
2.
  - a. For academic purposes, other than a performance, multiple copies of excerpts of works may be made, provided the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one per pupil.
  - b. For academic purposes, other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.



4. A single copy of a bound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright, which may exist in the sound recording).

#### **PROHIBITIONS**

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purposes of performance, except as in permissible use, 1 above.
4. Copying for the purpose of substituting for the purchase of music, except as in permissible uses 1 & 2 above.
5. Copying without the inclusion of the copyright notice which appears on the printed copy.

It is not permissible to make copies in order to provide extra parts for one instrument. Nor is it permissible to make copies for contests or for choral or speaking parts for musical plays. Additional copies need to be purchased or duplication rights negotiated.

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#### **OFF-AIR VIDEORECORDING**

In regard to the use of copyrighted video materials, the school district strictly observes the Doctrine of Fair Use and the 1981 Guideline for Off-Air Recording of Broadcast Programming for Educational Purposes.

The criteria for determining Fair Use is reiterated here (see also Section entitled Fair Use, pages 2 – 3).

Fair Use:

The factors used in determining whether use of copyrighted material is “fair use” are:

1. The purpose and character of the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used.
4. The effects on the potential market.



### Guidelines\*

The following guidelines were developed by a congressional subcommittee, which was attempting to deal with the problem of providing legitimate access to programs for instructional use. According to these guidelines, an educational institution may tape programs off-air if they adhere to the following conditions (Congressional Record, October 14, 1981):

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1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
2. A **BROADCAST PROGRAM** may be recorded off-air simultaneously with broadcast transmission (including cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon conclusion of the retention period, all off-air recordings must be erased or destroyed immediately.

### **DEFINITION**

“**BROADCAST PROGRAMS**” are television programs transmitted by television stations for reception by the general public without charge and in what is considered to be the normal VHF/UHF reception range i.e., those stations that you would be able to receive with a regular antenna system (channels 2, 4, 5, 7, 9, 11, 21, 25, 27, 38, 50 and 56).

Programming on most cable channels may not be recorded. Please see the Library/ Media personnel for details regarding the taping of cable programming.

3. Off-Air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once **ONLY** when instructional reinforcement is necessary in **CLASSROOM** and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction during the first 10 consecutive school days in the 45 calendar day retention period. “School days” are schools session days – not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions – within the 45-day period.



**DEFINITION**

**CLASSROOM** – a place devoted to instruction and includes a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium itself, if actually used as a classroom for systematic instruction activities.

4. Off-air recordings may be made only at the request of and used by individual teachers and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

**DEFINITION**

**RECORDING THE SAME PROGRAM MORE THAN ONCE** – the PBS system annually provides exemptions for certain programs allowing for extended retention periods and/or exemptions to the one tape per program guidelines from the producers of their programming. Please check with the Library/Media personnel as to the current producer policies.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e. to determine whether or not to include the broadcast program in the recording institution collection for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined with or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

While the Library/Media Department is willing to meet user requests for off-air recording within the scope of the above guidelines, many educators now own, or have access to



recording equipment and it is not unusual for teachers to record off-air at home with the intent of using the recording in the course of "FACE TO FACE" teaching activities. This practice may be acceptable only in the event that the "fair use" guidelines and our own in-house procedures (see Appendix) are observed. The guidelines do not allow for the use of off-air recordings made by students, parents or any other third parties not directly involved in the field of education.

Lastly, any materials recorded off-air must be approved for use in the schools in advance whether the recording is made in-house by the Library/Media personnel, or at home by the teacher. There is a form available in the Library/Media center for this purpose. The Library/Media personnel are responsible for pursuing any license agreements or requests for permission to maintain off-air recordings beyond the 45-day retention period and must be consulted if there is any interest in the same.

#### **VIDEOTAPE/DVD – PURCHASED AND RENTED**

In addressing the issue of purchased or rented videotape/DVD, teachers in the Londonderry School District must first be aware that no videotape/DVD may be used unless it has been approved for instructional use much in the same manner as textbooks are approved. The responsibility for the selection of instructional materials is vested in the school administration per School District policy. Teacher input into the process is certainly welcome. Library/Media personnel are responsible for arranging previews of material which you may wish to suggest for purchase but the final decision for purchase, and scope of use remains with administration (see Appendix – IIAC with regulations). Given these parameters, use of videotape/DVD may seem somewhat restrictive. Nonetheless, there are several important things you should be aware of as you pursue the process to use material you feel would be educationally beneficial to your students.

The most critical factor employed in determining whether a videotape/DVD can be used within the school setting is establishing whether the intended use is instructional or for public performance. Section 110 (1) of the copyright law provides educators with specific rights to use copyrighted material in "Face To Face" learning situations. Most videotape/DVD available for purchase or rental is labeled with the by now familiar "FOR HOME USE ONLY" or other equally intimidating warning labels. Despite the severity of the message the law is clear – you may use those materials for instructional purposes. They may not be used (unless you have obtained permission) for entertainment, reward, assemblies or other non-instructional activities or event held on school property and to which the public may be invited. The exception to this is the provision of public performance rights under the auspices of a license agreement the district has with Movie Licensing, USA for certain production companies.

Please see the library media staff for a list of authorized productions.



Nonetheless, you must be extremely careful and subsequently, the school district must have no doubts, that any material that you intend to use which is either your personal property, or acquired through a rental, is not subject to a pre-existing contractual arrangement between you and a vendor in which you have in effect, given up your section 110 (1) exemption rights or which supersedes the district's agreement with Movie Licensing, USA. In addition, many vendors solicit business from educators in direct violation of a contractual arrangement that they have entered into with a copyright holder, or distributor for the copyright holder, in which they agree to sell or rent only to the "home" market. The school district will not allow you to use any material purchased or rented outside our own control without being assured that neither you, nor the agency from which you obtained material, is operating outside the law.

In general, it is advisable to utilize material that is already part of our resource collection, or which may be purchased or rented through an agency specializing in service to the educational community.

#### **REPRODUCTION OF AUDIOVISUAL WORKS\***

The following guidelines are based upon Fair Use criteria, legal opinions, court cases and suggestions of producers and educators. These unofficial guidelines have been in effect since 1976 and have been accepted in practice. Again, there is not a specific section of the law pertaining to this area, but is addressed under various sections in general copyright terms.

#### **PERMISSIBLE USES**

1. Creating a series of slides or overhead transparencies from multiple sources, such as magazines, books, encyclopedias, etc., as long as one doesn't exceed one photograph, drawing, chart or diagram per source.
2. Creating a single overhead transparency from a single page of a consumable workbook, not exceeding the one page from the entire book.
3. Salvaging useful frames from a damaged recording or other derivative in order to create a slide set, as long as the frames are maintained in the same chronological order as the original recording, minus the damaged frames.
4. Using a projector to enlarge a map of an area for tracing in a larger scale, as long as the map is not reproduced with those parts that make it copyrightable – i.e., color scheme, shading, how cities, buildings are symbolized, etc.
5. Duplicating visual or audio materials of a non-dramatic literary work in order to provide materials for the deaf or the blind. In addition, these and other copyrighted materials may be legally transmitted to blind or deaf individuals via cable or closed circuit systems.



### PROHIBITIONS

1. No duplication of cassette tapes for archival, backup or for multiple uses unless reproduction rights were given at the time of purchase.
2. No reproduction of musical works (i.e., recordings, etc.) converted into another form for use, such as audio tapes (see note).
3. No reproduction of any audiovisual works in its entirety, except for off-air taping as per the guidelines in the OFF-AIR VIDEORECORDING section.
4. No conversion of one media format into another, without permission, i.e., 16mm to videotape, with the exception(s) that (1) copies of old motion picture films, subject to deterioration, (mainly pre-1942) may be made for archival preservation and (2) libraries may convert media formats that are no longer in production and for which the equipment to playback or perform is no longer in production (3) are provided by the TEACH Act for distance learning.
5. No narration of entire stories onto audiotape.

NOTE: Protection under copyright is only for sounds as they exist. This doesn't prevent a performance or recording in which sounds are limited. Infringement occurs when all or a substantial portion of the actual sounds are reproduced. Mere imitation doesn't constitute copyright infringement.

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### COMPUTER SOFTWARE

It is the intent of the Londonderry School District to adhere to the provisions of copyright laws in the area of microcomputer software. The 1976 U.S. Copyright Act and its 1980 Amendments provide a guide for software use and its application to education. The copyright law and the guidelines for computer software are for the protection of all: users, publishers and authors.

It is also the intent of the district to comply with the license agreements and/or policy statements contained in the software packages used in the district. In circumstances where the interpretation of the copyright law is ambiguous, the district shall look to the applicable license agreement to determine appropriate use of the software (or the district will abide by the approved Software Guidelines).

1. The use of computer software issued by the school district shall adhere to copyright laws as they apply to computer software. Congress passed an addition to the copyright law specifically for computer software in December 1980.



2. All archival copying of software will be through request to the IT department. Archival or back-up copies are for user protection and should provide uninterrupted use of a computer program. Archival copies should be used only while ordering a replacement copy of a damaged original.
3. Only software that has been purchased, issued or approved by the school district may be used on school district property. All software must have prior approval/verification from the appropriate administrator before being used within the school district. Two of the areas of concern are the content and the source/ownership of the program. Teacher/staff owned software must have approval of the school principal (i.e., utilizing the Instructional Material Approval Form) prior to use within the district or on district property.
4. Illegal copies of copyrighted software may not be made or used on school district equipment. Under no circumstances shall any software without proper copyright be used on school district equipment. At no time can school district equipment be used for the copying or the creation of additional copies of illegal copies of computer software.
5. Computer software and legal copies of software may not be leased, sold or copied without the permission of the appropriate administrator.
6. Software companies that provide a system master allow the owner to make a working copy. Working copies are for everyday use and if damaged can be replaced by another copy made from the system master. The system master/working copy configuration provides for the owner of the program to have uninterrupted use of the software on a single workstation/computer. This does not allow for multiple copies of the program for use on several machines.
7. Only software that is designed specifically for a network and was purchased for that purpose may be used in a networked or disk sharing system. When software is used in this environment, efforts will be made to insure against software copying and for the appropriate use under the copyright agreement.
8. Site licensing allows staff duplicating privileges for software to be used in-district for instructional purposes or as a management tool. The ownership of any software acquired through a site license remains with the district. We have several different site licenses and each is unique. Please consult with library media or computer education personnel for specific provisions related to particular agreements (i.e., Inspiration, Kidspiration, etc.).



### MULTIMEDIA

The term “multimedia” refers to a combination of different types of media-graphics, text, audio, video, film etc. Multimedia programs can be created from original sources or third party materials to run on any variety of computer platforms, or can be downloaded for replay via any number of on-line services or the Internet. The American Library Association and National Education Association have advised that the term multimedia is a misnomer and that the term “mixed media” may be a more accurate description of what actually occurs (The Copyright Primer for Librarians and Educators, ALA/NEA, 1995, p. 78). Guidelines concerning multimedia fair use applications have been developed by the Consortium of College and University Media Center (CCUMC) and reprinted in this section. The guidelines, including letters of support from the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, and the Register of Copyrights, U.S. Copyright Office, formed the body of a non-legislative report adopted on September 27, 1996, by the Subcommittee on Courts and Intellectual Property, Committee of the Judiciary, U.S. House of Representatives, chaired by Carlos J. Moorhead with ranking Democratic member Patricia Schroeder. “While only the courts can decide whether a particular use of a copyrighted work fits within the fair use exemptions, these guidelines represent the participants’ consensus view of what constitutes the fair use of a portion of a work which is included in a multimedia educational project...They grant a relative degree of certainty that a use within the guidelines will not be perceived as an infringement of the Copyright Act by the endorsing copyright owners, and that permission for such use will not be required...”

However, the mere fact that authoring software and sophisticated copying technologies are now so widespread and accessible, make this a major area of concern for educators. Remember, the essential rights afforded to the copyright holder are clearly extended to multimedia regardless of the fact that the format may be different. Therefore, it is advisable to proceed with the development of multimedia cautiously and to continue to respect that permission will need to be obtained to perform, reproduce, distribute, display or modify any media which is copyrighted. Regarding classroom use, it is best to stick with original or public domain materials. It should be noted that the so-called “ten percent rule”, which is utilized to determine how much materials may be photocopied for instructional purposes, does not necessarily apply across the board to multimedia.

#### **CCUMC Guidelines for Multimedia**

These guidelines shall not be read to supersede other preexisting fair use guidelines that deal with the Copyright Act of 1976.

## 1. INTRODUCTION

**1.1 Preamble:** Fair use is a legal principle that defines the limitations of exclusive rights \*\* of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for non-commercial educational uses. There is no simple test to determine what is fair use. Section 107 of the Copyright Act \*\* sets forth the four factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a “fair use”: (1) the purpose and character of 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.

While only the courts can legally determine whether a particular use is fair use, these guidelines represent the participants' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use. The participants also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain – such as U.S. government works or works on which copyright has expired for which there are no copyright restrictions – or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects. This preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

**\*\*See Section 106 of the Copyright Act\*\***The Copyright Act of 1976, as amended, is codified at 17 U.S.C. Sec. 101 et seq.



**1.2 Background:** These guidelines clarify the application of fair use of copyrighted works as teaching methods are adapted to new learning environments. Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities.

Educators and students want guidance about the application of fair use principles when creating their own multimedia projects to meet specific instructional objectives.

**1.3 Applicability of These Guidelines:** (Certain basic terms used throughout these guidelines are identified in bold and defined in this section.)

These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by non-print educational institutions. Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. Educational institutions are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of the guidelines, educators include faculty, teachers, instructors and others who engage in scholarly, research and instructional activities for educational institutions. The copyrighted works used under these guidelines are lawfully acquired if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for educational purposes in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under section 3. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines, such as those for off-air taping, may be relevant.



## **2. PREPARATION OF EDUCATIONAL MULTIMEDIA PROJECTS USING PORTIONS OF COPYRIGHTED WORKS**

These uses are subject to the Portion Limitations listed in Section 4. They should include proper attribution and citation as defined in Section 6.2.

**2.1 By Students:** Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

**2.2 By Educators for Curriculum-Based Instruction:** Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia programs for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

## **3. PERMITTED USES OF EDUCATIONAL MULTIMEDIA PROGRAMS CREATED UNDER THESE GUIDELINES**

Uses of educational multimedia projects created under these guidelines are subject to the Time, Portion, Copying and Distribution Limitations listed in Section 4.

**3.1 Student Use:** Students may perform and display their own educational multimedia projects created under Section 2 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses, such as job and graduate school interviews.

**3.2 Educator Use for Curriculum-Based Instruction:** Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:

**3.2.1** for face-to-face instruction,

**3.2.2** assigned to students for directed self-study,

**3.2.3** for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study.



After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the multimedia project.

**3.3 Educator Use for Peer Conferences:** Educators may perform or display their own multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.

**3.4 Educator Use for Professional Portfolio:** Educator may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses, such as tenure review or job interviews.

#### **4. LIMITATIONS—TIME, PORTION, COPYING, AND DISTRIBUTION**

The preparation of educational multimedia projects incorporating copyrighted works under Section 2, and the use of such projects under Section 3, are subject to the limitations noted below.

**4.1 Time Limitations:** Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in Section 3.1.

**4.2 Portion Limitations:** Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. In the aggregate means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limits apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under Sections 3.1 and 4.3 should comply with the portion limitations in this section.

**4.2.1 Motion Media:** Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines.

**4.2.2 Text Material:** Up to 10% or 1,000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

**4.2.3 Music, Lyrics and Music Video:** Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Section 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work. Note: The district subscribes to an online music/sound effects service of cleared recordings.

**4.2.4 Illustrations and Photographs:** The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2.

**4.2.5 Numerical Data Sets:** Up to 10% or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

**4.3 Copying and Distribution Limitations:** Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted by Section 3, there may be no more than two use copies only one of which may be placed on reserve as described in Section 3.2.3.

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3.3 and 3.4 for educators and Section 3.1 for students.

Note: The district subscribes to an online music/sound effects service of cleared recordings.



## 5. EXAMPLES OF WHEN PERMISSION IS REQUIRED

### 5.1 Using Multimedia Projects for Non-Educational or Commercial Purposes:

Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

### 5.2 Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines:

Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond limitations listed in Section 4.3.

### 5.3. Distribution of Multimedia Projects Beyond Limitations Listed in These

**Guidelines:** Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in Section 3.2.3, without obtaining permissions for all copyrighted works incorporated in the program.

## 6. IMPORTANT REMINDERS

**6.1 Caution in Downloading Material from the Internet:** Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

**6.2 Attribution and Acknowledgment:** Educators and students are reminded to credit the sources and display the copyright notice © and copyright ownership information if this is shown in the original source, for all works incorporated as part of the educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g., credit section) except for images incorporated into the project for the uses described in Section 3.2.3. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed.



In those cases, when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g., during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

**6.3 Notice of Use Restrictions:** Educators and students are advised that they must include on the opening screen of their multimedia program and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the multimedia fair use guidelines and are restricted from further use.

**6.4 Future Uses Beyond Fair Use:** Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

**6.5 Integrity of Copyrighted Works: Alterations:** Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

**6.6 Reproduction or Decompilation of Copyrighted Computer Programs:** Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example, the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

**6.7 Licenses and Contracts:** Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

**INTERNET AND ACCEPTABLE USE POLICY**

The Internet connects thousands of computers all over the world and millions of individual subscribers. Students and teachers have access to:

- 1) electronic mail communication with people all over the world.
- 2) a wide variety of information/reference sites.
- 3) public domain software and shareware of all types.
- 4) discussion groups on a plethora of topics.
- 5) access to many library catalogs, the Library of Congress and ERIC.

With access to computers and people all over the world also comes the availability of material that may not be considered to be of educational value in the context of the school setting. The Londonderry School District has taken precautions to use this resource responsibly. However, on a global network, it is impossible to control all materials and an industrious user may discover controversial information. The Londonderry School District firmly believes that the valuable information and interaction available on this worldwide network far outweighs the possibility that users may procure material that is not consistent with the educational goals of the district.

Internet access is coordinated through a complex association of government agencies and regional and state networks. In addition, the smooth operation of the network relies upon the proper conduct of the end users who must adhere to strict guidelines. In general, this requires efficient, ethical and legal utilization of the network resources. If a Londonderry School District user violates any of these provisions, his or her account will be terminated and future access could possibly be denied. As Internet and online service providers, schools and libraries could be sued for activities taking place on their network.

“Unless it is otherwise stated, assume that all materials on the Internet—including web sites and graphics—are copyrighted, and that existing copyright guidelines, such as those involving photocopying, multimedia, and fair use, apply. The recent Digital Millennium Act confirmed many of the rights of authors who have had their works published on the Internet, but introduced some special privileges for libraries and educational institutions.” (reproduced with permission)

All users of Internet services provided by the district must read related policy statements and sign an [Acceptable Use Statement](#).



### **DISTANCE EDUCATION AND CABLECASTING**

Advances in technology provide opportunities to explore new delivery systems for instruction. Distance education involves the “transmission” of lessons to remote or off-site locations or the reception of the same. The copyright issue applies inasmuch as permissions should be obtained to both use and transmit copyrighted materials employed by an instructor during the course of the lesson. On the receiving end, one must be careful to understand what rights, if any, have been given to the remote or off-site location to videotape and maintain the lesson. As of yet, there are no agreed upon guidelines by which to steer and so the best advice is to proceed with extreme caution in the area of distance learning, transmission and receipt of programming. Please consult with your building school library media specialist who will be able to advise or direct you.

We are fortunate to have access to our own educational cable channel (LEO21). An advisory board has been established to help coordinate programming and each school has representation. In general, this representative is an assistant principal, familiar with school board policies which must be considered in the development of programs. These individuals can advise or direct you regarding the use of any copyrighted materials for a given program. All materials must be cleared for use prior to cablecast on LEO21. This is especially true of music resources. See the library media staff for assistance in locating cleared music resources for your production. Music licensed through ASCAP/ BMI may be used for cable cast if cleared by them. A review of other uses of music for instructional/performance purposes is found on page 6 of this guide. Also, please be advised that special permission must be obtained before a copyrighted play may be taped and/or replayed or cablecast.

### **USE OF STUDENT WORK**

In the instance of public display of students' work not covered by the district notice of release, they (if 18 or older) or parent/legal guardian must provide permission for such use. Please contact the library staff for a release form.



### ADDITIONAL INFORMATION/CONCLUSION

In this guide, we have discussed the issue of copyright as it relates to educational situations and circumstances, yet, copyright is an issue that society in general must be informed about, especially in the information age – a time in which technology has given us the ability to seemingly duplicate at will. Although the library media and technology staff are not in a position to offer binding legal advice, we can put you in touch with sources of information that may help to clarify any additional questions you have regarding copyright. We welcome your questions and will do our best to assist you.

All sources cited in the bibliography included at the end of this guide are available for your use and staff will continue to try and keep up-to-date with legislation and court decisions that affect the educational community and relay that information to you.

# APPENDIX

[Instructional Materials and Library Collection Development Policy/Regulation](#)

[Instructional Material Approval Form](#)

[Software Code of Ethics](#)

[Acceptable Use Regulations and Agreement](#)

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