

BP 3750 USE OF COPYRIGHTED MATERIAL

References:

Education Code Sections 32360 and 67302;
U. S. Code Title 17, Copyright Act of 1976

As part of the ongoing instructional process of the District, it is desirous and necessary to utilize the ideas, materials, and creations of those outside the immediate college community.

In many instances, the ideas, materials, and creations used have been copyrighted by the originators.

Using their materials requires following both existing law and judicial interpretation. Occasionally, local judgments must be made in areas where conflicting or no judicial interpretation exists.

Employees of the Riverside Community College District will abide by all aspects of the Copyright Law, Title 17 of the United States Code, to the extent possible under authoritative interpretation of the law.

When atypical requests for the use of or duplication of copyright materials occur, and where a clear interpretation of the law is not readily available (documented) from a recognized authority, District counsel will be contacted for an opinion/interpretation on the issue at hand

Date Adopted: March 17, 2009
(This replaces RCCD Policy 5045)

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Copies of copyrighted materials not specifically authorized by the United States Copyright Law will be made or displayed only if written authorization from the copyright owner has been received by the college/District department affected prior to the duplication or display activity.

No copies of illegally printed or duplicated copyrighted materials shall be knowingly owned or stored by any employee of the District.

Exceptions to the use of copyrighted material in the classroom are as follows under the "fair use" doctrine.

Fair Use

Reference:

Copyright Act, Section 107

The "fair use" doctrine permits limited use of copyrighted materials in certain situations, including teaching and scholarship. In some instances, copyright may be required for works that fall within "fair use."

I. Single Copying for *Faculty Members*

A single copy may be made of any of the following by or for a faculty member at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book
- B. An article from a periodical or newspaper
- C. A short story, short essay or short poem, whether or not from a collective work
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the faculty member giving the course for classroom use or discussion, provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below; and
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright

Definitions:

Brevity:

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
- iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "i" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity:

- i. The copying is at the instance and inspiration of the individual faculty member; and
- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

III. Prohibitions

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

- B. There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
- i. substitute for the purchase of books, publisher's reprints or periodicals
 - ii. be directed by higher authority
 - iii. be repeated with respect to the same item by the same faculty member from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

Compilations

Reference:

Basic Books, Inc. v. Kinko's Graphics Corp. (S.D.N.Y. 1991) 758 F.Supp. 1522; and Princeton University Press v. Michigan Document Services, Inc. (6th Cir. 1996) F.3d 1381.

Permission from the copyright owner should be obtained when using excerpts of copyrighted work to create anthologies or "coursepacks," even if the excerpts fall under the definitions in the "fair use" doctrine.

Online Courses

Reference:

The TEACH (Technology, Education and Copyright Harmonization) Act, USC 17, Copyright Act, Sections 110(2) and 112

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.

Obtaining Permission to Use Copyrighted Material

Responsibility for obtaining permission to print, duplicate or display copyrighted works shall rest with the individual using the copyrighted material. This would involve contacting the owner of the copyrighted work and obtaining written permission to use the work. All necessary records pertaining to copyright authorization shall be kept in the respective department office.

All requests for printing, duplication or display services, whether print or non-print shall be accompanied by an approved form, properly completed and signed by the individual requesting services indicating that the request is in full compliance with the copyright law and that written permission (if applicable) to duplicate or display material is on file with the appropriate department. Where exceptions are necessary, authorization to proceed with printing, duplication or display activities will require the signature of the Chancellor/President.

District personnel will follow the guidelines provided by the United States Copyright Office in Circular 21, *"Reproduction of Copyrighted Works by Educators and Librarians"*. A copy of this document is available from District libraries and the U.S. Copyright Office at <http://www.copyright.gov/circs/>.

District personnel will follow the guidelines for the off-air recording of radio and television broadcast programming for educational purposes, which stipulates:

- a. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous 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 date of recording. Upon conclusion of such retention period, all off air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
- b. Off-air recordings may be used once by individual faculty members in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms 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 ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.
- c. Off-air recordings may be made only at the request of, and used by, individual faculty members, 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 faculty member, regardless of the number of times the program may be broadcast.
- d. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of faculty members under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
- e. After the first ten (10) consecutive school days, off air recording may be used up to the end of the forty-five (45) calendar day retention period only for faculty member evaluation purposes, i.e., to determine whether or not to include the broadcast program

in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

- f. 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 or merged to constitute teaching anthologies or compilations.
- g. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Office of Primary Responsibility: Vice Chancellor, Educational Services, Workforce
Development and Planning

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