

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

1. Single Copying for Instructors

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her

1. : (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.
2. : (a) Either a complete article, story or essay of less than 2500 words, or an excerpt from any prose work of not more than 1,000 words or 10 percent of work, whichever is less, but in any event a minimum of 500 words.

Each of the numerical limits stated in 1 and 2 above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

3. : One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

4. with illustrations and which are intended sometimes for children and at other times for a more general audience all short of 2,500 words in their entirety. Paragraph 2 above shall not apply to such special work and containing more than 10 percent of the words found in the text thereof, may be reproduced.

1. The copying is at the instance and inspiration of the individual teacher, and
2. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time

1. The copying of the material is for only one course in the school in which the copies are made.
2. 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.
3. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

3. Prohibitions as to 1 and 2 above

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 reproduced and used separately
- B. There shall be no copying of or from work for teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

- C. Copying shall not: (a) substitute for the purchase of books, ~~public~~ [] v š • } [] directed by higher authority; (c) be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 1207 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Act. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

1. Permissible Uses

- A. 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.
- B. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a selection, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.
- C. 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.
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| Emergency Copying | Permanent Copying |
| Teaching Purposes | Performance Purposes |
| Excerpts | Performable Unit |
| Editing, simplification | Distortions, Alterations |
| Student Evaluation, Rehearsals (recordings) | Distribution of Multiple Copies (compulsory licensing) |
| Exams, Aural Exercises | Duplication of Tapes |
| | |
| Unfinished Business | |
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Fair use is recognized but is not spelled out until unfinished business

An instructor may:

1. Make a single copy of the following:
 - a. A chapter from a book
 - b. An article from a periodical or newspaper
 - c. A short story, sort essay or short poem, whether or not from a collective work
 - d. A chart, graph, diagram, drawing, cartoon or picture from book, periodical, or newspaper
 - e. A short excerpt (up to 10% from a performable unit of music, such as a song, movement or section, for study purposes
2. Make multiple copies (not to exceed one per pupil) for classroom use of the following:
 - a. A complete poem if less than 250 words (and if printed on not more than two pages)
 - b. An excerpt of not more than 250 words from a longer poem
 - c. A complete article, story or essay of less than 2,500 words

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- g. Up to 10% of a performable unit of music (song, movement, section) for academic purposes other than performance
3. Make a single recording of student performance for evaluation, rehearsal, or archival purposes.
4. Make a single recording of aural exercises or examination questions using excerpts from recorded copyright materials.
5. Make an emergency replacement copy to substitute for a purchased copy that is not available for an imminent musical performance.
6. Display a copy of a work on an opaque projector.
7. Make a single transparency, provided the fair use criteria and guidelines are complied with. (See 1.d above)

The above copying is mandatory permitted under the fair use guidelines appearing in the House Report
 NOTE: The guidelines set up minimum and not the maximum standards of fair use so other uses may or may not be permitted, depending on the circumstances.

An instructor may not:

1. Copy to create anthologies, compilations or collective works or to replace or substitute for them.
- 2.

8. Copy more than three short works from the same collective work or periodical volume during one class term.
9. Utilize more than nine instances of multiple copying per course, per term.
10. Make copies of music (or lyrics) for performance of any kind in the classroom or outside of it, with the exception of the emergency replacement copy needed for an imminent musical performance.
11. Make copies without inclusion of the copyright notice.
- 12.

Instructional television

1. Is the work to be performed, displayed or played in the course of a face teaching situation in the classroom (or similar place devoted to instruction)?
2. Is the work being performed or displayed originating on closed circuit television within the school building where the instructor and pupils are located rather than transmitted from an outside location into classrooms?
3. Is the performance or display a regular part of the systematic instructional activities of a nonprofit educational institution?
4. Is the transmission made primarily for reception by persons whose disabilities or other special circumstances

The House of Representatives committee report that accompanied the copyright act defines several key phrases:

... subjects, but they do not include performances or displays, whatever their value or intellectual appeal

To summarize, Section 110 (1) authorizes the performance and display of any copyrighted work for face teaching, but it imposes some limitations.

1. Performances and displays of audiovisual works must be made from legitimate copies, including prerecorded video cassettes.
2. Performances and displays must be part of a systematic course of instruction and not for the entertainment, recreation or cultural value of any part of the audience.
3. Performances and displays must be given by the instructors or pupils.
4. Performances and displays must be given in classrooms and other places devoted to instruction.
5. Performances and displays must be part of the teaching activities of nonprofit educational institutions.
6. Attendance is limited to the instructors, pupils, and guest lecturers.

These six provisions are simple enough to be readily applied to nonprofit schools, colleges, and universities. In fact, the exemption is so broad that it seems unlikely it could be held by anything short of an amendment to the copyright act.

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This issue does not appear to involve nonprofit public, private, and church related schools and colleges so it is postponed to Chapter 5.

In conclusion, the Copyright act, whether intentionally or accidentally, prohibits performances of audio visual works, including video cassettes, except under the educational exemption, the home use exemption, the business meeting exemption, or with a license.

In March of 1979, Congressman Robert Kastenmeier, chairman of the Subcommittee on Courts, Civil Liberties, and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guild and unions. The following guidelines reflecting the programs for educational purposes. They specify periods of retention and use of such recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

6 US House of Representatives. Copyright Law Revision, Supplementary report of the register of Copyrights on the General Revision of the US Copyright Law: 1965 (Washington, ED.C.: Government Printing Office, 1967), 37.

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Miller, Jerome K., Using Copyrighted Videocassettes In Classrooms, Libraries, And Training Centers, Friday Harbor, WA Copyright Information Services, 1988. pp-114, 19, 83

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1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.
 2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit 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 destroyed. This section applies to television programs transmitted by television stations for reception by the general public without charge.
 3. Off-air recordings may be used once by individual teachers in the course of 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 first (45) day calendar day after recording, and other scheduled interruptions within the forty-five (45) calendar day retention period.
 4. Off-

