

## **KERN COUNTY SUPERINTENDENT OF SCHOOLS**

### **INSTRUCTION & PERSONNEL**

#### **GUIDELINES RELATED TO COPYRIGHTED MATERIALS**

Employees of the Office of the Kern County Superintendent of Schools ("KCSOS") are subject to the provisions of the Copyright Act of 1976. Teachers, administrators, administrative assistants and other personnel must take an active role in ensuring compliance with the United States copyright law and Congressional guidelines.

The inappropriate or unauthorized handling of materials protected by copyright can trigger liability for employees as well as the organization. KCSOS does not sanction illegal use or duplication of copyrighted materials in any form. Copyrighted materials may not be produced or used on KCSOS-owned equipment, within KCSOS-owned facilities, or at KCSOS-sponsored functions without appropriate permission or legal authority. Employees who knowingly and/or willingly violate KCSOS's copyright policies do so at their own risk and may be required to remunerate KCSOS in the event of a loss due to litigation. The following guidelines are intended to assist staff in handling copyrighted material. Staff are expected to adhere to the requirements of KCSOS's Superintendent's Policy 6162 and these Guidelines. If in doubt as to the applicability of an exception to or limitation on copyrights, staff are expected to adopt a conservative approach and refer any questions to the KCSOS Chief of Staff, as designee for the County Superintendent.

#### **WHAT IS COPYRIGHT?**

Copyright protects the original expression of authors, whether in the form of books, articles, software, music, audiovisual files and other materials. A copyright holder has the exclusive legal right to distribute, duplicate, adapt, publicly perform or publicly display the original content. Any KCSOS employee who exercises any of these rights without permission or legal justification (e.g., face-to-face teaching exemption, the "fair use" doctrine or the public domain exemption) is in violation of the law.

Ownership of the physical work is separate and distinct from ownership of the copyrights in that work. In other words, just because KCSOS owns the physical copy of a printed materials or film, it does not mean it has the right to duplicate, adapt, sell, publicly perform or publicly display it.

Furthermore, no particular action, such as registering the copyright or placing a copyright notice or symbol (©) on the work, is necessary to trigger the legal protection of copyright.

The exercise of one of the exclusive rights of the copyright holder by a person with access to the copyright holder's work without permission or some other legal basis for doing so without

permission is considered a copyright infringement. Violations of federal copyright law can carry stiff penalties for the infringer.

## **WHAT ABOUT INTERNET ASSETS?**

**(Clipart, cartoons, animated GIFs, photos, audio, video, etc.)**

It is very tempting to download images or audio from the Internet to embellish presentations, websites or printed reports. However, just because the material is freely accessible on the web does not mean the owner(s) have waived their copyright. It should be assumed that all assets available on the Internet are protected by copyright unless the copyrights have been licensed or purchased, or the content has been obtained through a reliable royalty-free website or the originator has released the content for use by the public through a Creative Commons license or another means.

## **TYPES OF COPYRIGHT EXEMPTIONS**

The following are instances where permission of the copyright holder may not be required for staff to use copyrighted material. Any questions regarding the availability of an exception should be referred to the KCSOS Chief of Staff.

- **Public Domain:** Determination of whether a material is in the public domain depends on the date of the original copyright and other factors. Once subject to copyright, works created after January 1, 1978, will normally be protected for 70 years after the author's death. After that, the material passes into the public domain for all to use.
- **Face-to-Face Teaching Exemption:** To qualify for this exemption, you must: be in a classroom (or similar place devoted to instruction); be at a non-profit education institution and be there in person; and engaged in face-to-face teaching activities. This exemption only applies to the display of materials (including movies) for educational purposes. This exemption does NOT permit copying of materials for distribution, however (i.e., making hand-outs for a class or training).
- **Fair Use:** A limited exception to copyright can be found in the "fair use" doctrine. Under the fair use doctrine, permission of the copyright holder may not be required for purposes such as criticism, comment, news reporting, teaching, scholarship and research depending on the purpose, nature of the copyrighted work, and the amount and substantiality of the work being reproduced.

## **HOW DOES THE FACE-TO-FACE TEACHING EXEMPTION WORK?**

In the course of face-to-face instruction in a classroom or similar place devoted to instruction, teachers or students may recite, render, play, dance, act, or show a copyrighted work either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, show its images in any sequence or to make the sounds accompanying it audible, provided that: (17 USC 101, 110)

1. The performance or display is given by means of a lawfully obtained copy of the work.
2. The performance or display is made by, at the direction of, or under the actual supervision of a teacher as an integral part of a class session.
3. The performance or display is directly related and of material assistance to the teaching content of the transmission.
4. The transmission is limited to students enrolled in the course or to Governing Board members or employees as part of their official duties or employment.
5. If the work is to be digitally transmitted, KCSOS has applied technological protections that reasonably prevent retention of the work in accessible form for longer than the class session and the unauthorized further dissemination of the work.

Any use of a motion picture or other audiovisual work outside the curriculum, such as for entertainment, a school or class reward, or a fundraiser, shall require permission from the copyright holder or a special viewing license. NOTE: A PowerPoint presentation at an educational meeting or training using original materials pulled from the web would not qualify under the face-to-face teaching exemption.

### **HOW DOES “FAIR USE” WORK?**

In considering whether a copyrighted work may be used without the copyright holder's permission on the grounds that the intended use is "fair use" pursuant to Title 17 United States Code section 107, including reproduction in copies, phono records, or any other reproductive form for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, KCSOS staff shall consider all of the following factors: (17 USC 107)

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes. A nonprofit educational purpose alone does not automatically ensure fair use.
2. The nature of the copyrighted work. In general, the more creative a work (e.g., fiction), the more protection from copying it will be afforded, as compared with more informational or functional works.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. This requires considering both the amount copied in relation to the overall work and whether the excerpt is a “critical part” of the work. Depending on the circumstances, this could mean that it would only be appropriate to copy a small percentage of the work, or that it is not appropriate to copy a critical excerpt.

4. The effect of the use upon the potential market for or value of the copyrighted work. The greater the proportion of the work copied, the more likely it may be considered to reduce the value of the work. Any conditions on use (such as electronic passwords for student use) should be considered.

Any determination of fair use shall weigh together all the factors specified in items #1-4 above. There is no fixed rule as to what constitutes fair use. Stakeholder groups have agreed upon some nonbinding minimum guidelines which are included in the U.S. Copyright Office's Circular 21: *Reproduction of Copyrighted Works by Educators and Librarians*, available on its web site. However, KCSOS staff must consider all four factors specified in 17 USC 107 prior to using a copyrighted material without permission.

### **APPLYING FAIR USE-REPRODUCTION OF TEXT FROM COPYRIGHTED MATERIALS**

Each staff member reproducing copyrighted materials must first determine whether the reproduction without permission from the copyright holder is permitted based on the fair use guidelines outlined below. If the reproduction is not permitted according to these guidelines, the staff member must request permission in writing to reproduce the material from its copyright holder(s).

The following reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: *Reproduction of Copyrighted Works by Educators and Librarians*. Although the guidelines do not address the use of copyrighted works available on the Internet or through other technological resources, it is generally accepted that the use of such copyrighted works would follow the same guidelines established for other fixed and tangible works

#### **Permitted Use:**

*Staff may reproduce text from a copyrighted work from a printed resource, the Internet or other source, without permission from the copyright holder, under the following conditions:*

- Single copies at the request of an individual teacher for scholarly research, teaching or preparation to teach:
  - A chapter of a book.
  - An article from a magazine or newspaper.
  - A short story, short essay or short poem, whether or not from a collective work.
  - A chart, graph, diagram, drawing, cartoon or a picture.
- Multiple copies made by or for a teacher for classroom use or discussion at the request of an individual teacher for classroom use, not to exceed one copy per student in a course, and to be used for only one course in the school:
  - A complete poem or excerpt if less than 250 words.
  - A complete article, story or essay of less than 2,500 words.

- An excerpt from a larger prose work not to exceed 10 percent of the whole or 1,000 words, whichever is less, but in any event a minimum of 500 words.
- One chart, graph, diagram, cartoon or picture per book or magazine issue.
- No more than one work may be copied from the same author per term, and no more than three works may be copied from the same collective work or periodical per term. There can be no more than nine instances of multiple copying per course per term.\*
- All copies must bear the copyright notice. Multiple copies may be made only when a delay to request permission would preclude their most effective instructional use.

### **Prohibited Uses:**

- Copying used to create, replace or substitute for anthologies or collective works.
- Copying of "consumable" works such as workbooks, standardized tests, answer sheets, etc.
- Copying that would substitute for the purchase of books, publishers' reprints or periodicals.
- Repeated copying of the same item by the same teacher from term to term.

*\*NOTE: The above prohibitions do not apply to current news magazines and newspapers.*

### **REQUESTING PERMISSION TO USE COPYRIGHTED MATERIALS**

When in doubt, assume the work is copyright protected and request in writing for permission to use the materials. Requests for permission to use copyrighted materials shall include the following information:

- Title, author(s), editor(s) or publisher, producer(s) or distributor.
- Edition, copyright and/or production year.
- Exact amount of material to be used (i.e., lines, pages, running time, etc.).
- Nature of the use (i.e., how many times, when and with whom the material will be used).
- Name of requester and school site and contact information.
- Number of copies to be made.
- How the material will be reproduced.
- If an initial contact was made by phone, the request shall also include the name of the initial contact person.

### **GUIDELINES FOR REPRODUCING SHEET AND RECORDED MUSIC**

KCSOS staff may reproduce sheet music and recorded music without permission from the copyright holder as permitted under the nonbinding guidelines included in the U.S. Copyright Office's Circular 21: *Reproduction of Copyrighted Works by Educators and Librarians*.

### **GUIDELINES FOR PERFORMING OR DISPLAYING COPYRIGHTED WORKS**

Pursuant to 17 USC 101, the holder of a copyright for a motion picture or other audiovisual work retains exclusive rights for public performances of the work (i.e., exhibitions outside of one's home to a normal circle of family and social acquaintances), except that 17 USC 110 provides an

exception for performance or display of the work in face-to-face instruction. In such circumstances, it is not necessary to conduct an analysis of fair use nor obtain permission of the copyright holder. Pursuant to 17 USC 110, this exception only applies if KCSOS (1) institutes a policy regarding copyright; (2) provides informational materials on federal copyright laws to students, teachers, and other relevant staff; and (3) provides notice to students that materials used in connection with the course may be subject to copyright protection.

## **GUIDELINES FOR RECORDING BROADCAST PROGRAMMING**

The following section reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: *Reproduction of Copyrighted Works by Educators and Librarians* for fair use of off-air recording of free television programming. Although the guidelines do not address radio broadcasts, it may be assumed that similar guidelines would apply.

Teachers may make recordings of television programs for use in a classroom for educational purposes under the following conditions:

1. Only programs provided to the public free of charge may be recorded and shown. Any use of programming from paid television services shall require permission of the copyright holder.
2. The recording may be shown only during the first 10 consecutive school days after it is made. It may be used once by an individual teacher in the course of relevant teaching activities and may be repeated once only when instructional reinforcement is necessary.
3. A limited number of copies may be reproduced from each recording to meet the legitimate needs of the teacher. Each copy shall be subject to all the provisions governing the original recording.
4. The recording may be retained for 45 calendar days after it is made and then shall be erased or destroyed. However, after the first 10 consecutive school days, the recording may only be used for purposes of determining whether or not to include the broadcast program in the teaching curriculum. If the teacher decides to keep the program for use in the curriculum, he/she shall request permission from the copyright owner.
5. Off-air recordings need not be used in their entirety, but the content of recorded programs may not be altered.

## **GUIDELINES FOR COPYING COMPUTER PROGRAMS OR SOFTWARE**

KCSOS staff shall observe all licensing agreements between vendors and KCSOS, including monitoring the number of users permitted by an agreement. Unless the applicable licensing agreement authorizes multiple users of a single computer program or software, KCSOS shall not make multiple copies.

Copies of KCSOS-owned software may be made under either of the following conditions: (17 USC 117)

1. The copy is needed as an essential step in using the computer program with a particular machine.
2. The copy is used for archival or "backup" purposes only. This copy may be held only as a file copy and must be destroyed in the event that continued possession of the program ceases to be rightful, unless the copyright owner authorizes its sale, lease, or transfer as part of the sale, lease, or transfer of the original program.