

Bruce Guadalupe Elementary School  
Bruce Guadalupe Middle School

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Copyright & Fair Use Policy



**What a school thinks about its library is a measure of what it thinks about education.**

- **Harold Howe, former U.S. Commissioner of Education**

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November 2007

## **Bruce Guadalupe Library Media Centers Copyright and Fair Use Policy**

**Copyright** law exists to protect the creators of original works in any medium. Whether a writer, artist, musician, producer, or something else entirely, the holder of a copyright is protected from copying, distribution, or performance of his or her work without permission. This permission, when given, involves a license and often a fee. Use of a work without permission is copyright infringement and is punishable by civil and criminal penalties. Always remember that merely acknowledging or crediting the source of copyrighted material does not substitute for obtaining permission. (From PBS Teacher)

One possible means of using material without obtaining a copyright holder's permission is through "Fair Use." **Fair Use** - outlined in Section 107 of the U.S. Copyright Act of 1976 - states that, under certain conditions, a copyrighted work may be used without prior permission for, among other things, teaching, research, scholarship, and criticism. Besides the Fair Use defense, educators might qualify for an exemption to infringement under Section 110 of the Copyright Act. Distance educators should also take note of Section 112, which allows for the making of ephemeral copies of works authorized to be used under Section 110(2). The entire text of the U.S. Copyright Act of 1976 - and specifically Sections 107, 110, and 112 - can be viewed on the U.S. Copyright Office's Web site. The Copyright Office also discusses Fair Use in greater detail. (From PBS Teacher)

It is the intent of the Bruce Guadalupe Library Media Centers that all members of the Bruce Guadalupe community adhere to the provisions of the United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.). The following policy statements and guidelines constitute a manual for anyone at the schools who wishes to reproduce, alter, or perform works that are protected by copyright. Since copyright protection applies to a variety of creative works -- printed materials, sound recordings, video recordings, visual artworks, computer software, and others -- this policy has been written to address issues related to particular types of media.

Full text of the law and its legislative history, plus subsequent analysis and commentary, are available in from the links above. The BG LMC librarians can advise on problems that are not specifically addressed in this policy.

Members of the Bruce Guadalupe community who willfully disregard the copyright policy do so at their own risk and assume all liability.

## What Copyright Is

Copyright is a form of legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. Publication is not essential for copyright protection, nor is the well-known symbol of the encircled "c". Section 106 of the Copyright Act (90 Stat 2541) generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

1. Reproduce copies of the work.
2. Prepare derivative works based on the copyrighted work.
3. Distribute copies of the work by sale, rental, lease, or lending.
4. Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).
5. Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work -- including the individual images of a film - or a pantomime).

The copyright owner retains these rights even when the work itself belongs to someone else. However, the rights are not absolute. They are subject to both "Fair Use" limitations, which apply to all media, and medium-specific limitations.

## Fair Use

The doctrine of fair use, embedded in section 107 of the Copyright Act of 1976, addresses the needs of scholars and students by mitigating the rights of copyright ownership. However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules. To determine fair use, consider the following four factors [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

1. The purpose and character of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.

2. The nature of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.

3. The amount, substantiality, or portion used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.

4. The effect of the use on the potential market of the copyrighted work. This factor is regarded... as the most critical one in determining fair use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

## **Printed Materials**

### Works that May be Used Freely

Occasionally, scholarly publications such as journal articles include a note offering the right to copy for educational purposes.

Some categories of publications are in the public domain; that is, their use is not protected by copyright law:

1. Publications dated 1922 or earlier.
2. Works that do not include a copyright notice and were first published before January 1, 1978.
3. Most United States government documents.

Once a work has acquired public domain status it is no longer eligible for copyright protection.

## Photocopying

### Printed Materials Other Than Music: What Quantity Conforms to the Law?

The following parameters are widely considered to be inappropriately restrictive for academic needs. However, they define the limits within which we can be sure of complying with copyright law. Somewhat more extensive copying may be sanctioned by the fair use guidelines.

#### Single Copies for Scholarly Needs

1. One chapter from a book.
2. One article from a journal issue or newspaper.
3. Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10.0% or less of the total length of the book or journal issue.
4. A short story, short essay, or short poem.
5. A chart, diagram, drawing, graph, cartoon, or picture.

#### Multiple Copies for Classroom Use

Multiple copies for classroom use must meet the following tests of brevity, spontaneity, and cumulative effect. Each copy must also include prominent notice that it is copyrighted material.

##### Brevity

Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) 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 an excerpt of up to 500 words.

Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words.

(Each of the numerical limits above may be expanded to permit the completion of an unfinished prose paragraph or line of a poem.)

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

Special Works: Certain works in poetry or prose or in "poetic prose", which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

### Spontaneity

The copying is at the instance and inspiration of the individual instructor.

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

The copying of the material is for only one course, with no more than one copy per student in the course.

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 a term.

There shall not be more than nine instances of such multiple copying for one course during a term.

### Course Packets

Copyright litigation involving academic users has focused on these "anthologies", which are perceived as substituting for textbooks and thus as reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 1990 by Academic Books, Inc."

## Photocopying Music for Educational Purposes

### What Quantity Conforms to the Law?

For a Performance - Emergency copying is permitted so long as replacement copies are subsequently purchased.

Single Copies for Personal (Academic Purposes Other Than Performance) - An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

Multiple Copies for Classroom (Non-Performance) Use - Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.

Packets of Photocopied Music Excerpts  
See section above, "Course Packets ".

## **NOTICE**

### **WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The BG LMC reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

### **Photocopy Machines**

Every photocopy machine in the Bruce Guadalupe schools must include effective signage incorporating the following text:

*Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.*

Common Questions:

Can a whole book be photocopied when there seems to be no way to buy another copy?

Yes, so long as a vigorous marketplace search determines that another copy cannot be bought at a reasonable price, within a reasonable period. A reasonable investigation will always require recourse to commonly known trade sources in the United States and, if that fails, an attempt to obtain the copyright owner's permission.

Are there any concise, authoritative resources that can help determine when a particular publication might be free of copyright protection?

The United States Copyright Office issues a series of Copyright Circulars on many aspects of copyright, including duration and protection of foreign publications. Individual Circulars are frequently revised. Many Copyright Circulars are also available from the Internet.

What if I discover the need to copy more than would be permitted as "fair use" when there is insufficient time to obtain permission?

In a genuine emergency, you might proceed before written permission is received. However, the BG schools credibility in upholding the letter and spirit of the copyright law does not allow for many such exceptions. Further, if permission is subsequently denied, the disallowed copies would have to be withdrawn.

### **Unpublished Works**

Manuscripts, letters and other unpublished materials are likely to be protected by copyright regardless of age, even if they lack a notice of copyright. Consult the BG librarians.

Unpublished works that belong to the schools may be reproduced in facsimile format for preservation purposes or for deposit for research use in another library



or archives. Copies may usually be made for individual researchers under the law's Fair Use provisions.

## **Audiovisual Materials**

### Films and Video Classroom Use

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be "performed". For example, videocassettes from a video rental outlet usually bear a label that specifies "Home Use Only". However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

Section 110 (1) of the Copyright Act of 1976 specifies that the following is permitted:

Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made...and that the person responsible for the performance knew or had reason to believe was not lawfully made.

Additional text of the Copyright Act and portions of the House Report (94-1476) combine to provide the following, more detailed list of conditions:

1. They must be shown as part of the instructional program.
2. They must be shown by students, instructors, or guest lecturers.
3. They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
4. They must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
5. They must be shown only to students and educators.
6. They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

### **Use Outside the Classroom**

Besides use in classrooms, videocassettes and videodiscs that are owned by the BG LMC may ordinarily be viewed by students, faculty or staff at workstations or in small-groups.

### **Copying Videotapes / Off-Air Recording of Broadcasts, Including Cable & Satellite TV**

Copying videotapes without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price [Section 108 of the Copyright Act of 1976].

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes", an official part of the Copyright Act's legislative history, applies to most off-air recording:

1. Videotaped recordings may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. Videotaped recordings may be shown to students only within the first 10 school days of the 45-day retention period.
3. Off-air recordings must be made only at the request of an individual instructor for instructional purposes, not by staff in anticipation of later requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
6. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same

restrictions as the original recording.

7. The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Certain public broadcasting services (Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, and Agency for Instructional Television) impose similar restrictions but limit use to only the seven-day period following local broadcast.

### **Network Distribution of Video**

If applicable Bruce Guadalupe or UCC negotiates for closed-circuit distribution rights when purchasing access to satellite broadcasts or obtaining works on videotape. Without explicit permission for closed-circuit distribution, network transmission of a video is not permissible unless "Classroom Use" structures are met.

### **Common Questions**

May I purchase or rent a film from the local video store and use it in my class?

Tapes from a video store are labeled "Home Use Only", indicating a licensing agreement with the copyright holder. Nevertheless, use of such tapes is considered "fair use" in a face-to-face teaching situation. Tapes marked "Home Use Only" may also be placed on reserve and viewed in the classroom if they are used strictly for instructional purposes and not entertainment.

Is it permissible to make a copy of a rental video in order to use it again, later?

No. That would infringe on the rights licensed to the rental agency. (Absent reasonable return for service, rental agencies cannot survive.)

Can an auditorium or other large space be used to show a video labeled

"Home Use Only" to a class?

Yes, so long as the performance is not open to the public and is for an instructional purpose within the structure of the course. Use for entertainment is prohibited.

May a club or other group show a video obtained from a local video store?

No. However, many libraries and distributors offer the required "public performance rights" that are included in a higher rental fee.

Can videotape be made of a film that is out of print and deteriorating rapidly?

Although the film is out of print, permission of the copyright owner is nonetheless required.

### **Sound Recordings**

#### **Non-Music Recordings**

Cassettes or disks may not be copied unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use, however.

#### **Music Recordings**

A single copy may be made for the purpose of constructing aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply.

### **Slides and Photographs**

#### **Reproduction**

Whenever possible, the BG LMC will either purchase slides and photographs from authorized sources or will borrow from institutions which offer licensing for single-copy reproduction. In either case, further copying would be prohibited.

Occasionally, slides of copyrighted images that are needed for classroom purposes cannot be obtained ready-made in a timely fashion. If the process of slide making would fail to meet Fair Use requirements, the requestor must

demonstrate that the copyright owner has granted permission.

## Display

Copyright ownership of slides and photographs encompasses control over display as well as reproduction. However, Section 110 of the Copyright Act of 1976 addresses the display of copyrighted slides and photographs in educational settings by allowing "display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction" so long as the copy of the artwork was lawfully made. Furthermore, the purpose of the display must be integral to the course.

## **Educational Multimedia Fair Use**

Digital fair use is a newer area of copyright law and one that is constantly changing. The current guiding principles for fair use in educational multimedia can be found in Section 110 of the Copyright Act. Section 110(1) lays out an exemption for face-to-face teaching, while 110(2), which encompasses the majority of the TEACH Act of 2002, delineates the more limited exemptions for distance education. Although the full text of the TEACH Act may be found on the THOMAS website of the Library of Congress, the American Library Association has a handy "highlights" sheet available (PDF format).

"Educational multimedia" means those projects that combine educators' or students' original material (such as course notes or commentary) with copyrighted media in any format (such as video, music, text, graphics, illustrations, photographs, or software) into an integrated presentation as part of a systematic learning activity of a nonprofit educational institution.

Guidelines for fair use in educational multimedia have been developed but, much like the Guidelines for Off-Air Recording, they do not carry the force of law. A Proposal for Fair Use Guidelines for Educational Multimedia was drafted during the 1996 Conference on Fair Use (CONFU) discussion on digital fair use, in which PBS participated. Although PBS has not formally endorsed the proposed guidelines, they may provide guidance in the development of multimedia projects using portions of copyrighted work. The proposed guidelines may be found in the "Proposal for Fair Use Guidelines for Educational Multimedia" at Section J of the CONFU Report Appendix available on the U.S. Patent and Trademark Office's

website.

Key elements of the Educational Multimedia Fair Use Guidelines are summarized here. The Guidelines specify how much of copyright-protected sources may be included in multimedia products prepared by students or faculty members for course-related work. Use of larger portions requires permission from copyright owners. Creators of multimedia products may prepare a total of three copies, one of which is for preservation and replacement purposes only. An exception is allowed for joint projects: each principal creator may retain a copy. Fair Use status expires two years after the first instructional use of a particular multimedia product.

#### Motion Media

Up to 10% or 3 minutes of a source, whichever is less.

#### Text

Up to 10% or 1000 words of a source, whichever is less. An entire poem of less than 250 words, but no more than 3 poems or excerpts by one poet. No more than 5 poems or excerpts from one anthology.

#### Music, Lyrics, Music Video

Up to 10% but not more than 30 seconds total from an individual work.

#### Illustrations, Photographs

No more than 5 images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.

#### Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less.

#### Internet Sources

Though it can be difficult to determine what is copyright protected and what is in the public domain, the multimedia creator is responsible for adhering to copyright law.

### Opening Screen Notice

"Certain materials are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use." Credit the sources and display the copyright notice and copyright ownership information if shown in the original source. 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 notice includes the word "Copyright" or the copyright symbol, the name of the copyright holder, and the year of first publication.

### Integrity of Sources

Any alterations of copyrighted items must be noted.

### Computer Software

UCC and the BG schools negotiate site licenses with software vendors whenever possible for software products that are selected for extensive use, since these arrangements provide the school community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

Software products that are not licensed to the BG schools may also be used. However, copying is strictly limited except for backup purposes. Whether the software is transferred from the original to a hard disk or to an archival diskette, the backup copy is not to be used at all so long as the other copy is functional.

The BG LMC is permitted to lend software, but only for temporary use, not for copying. If the borrower transfers the software to a hard disk, the program must be deleted when the borrowed item is returned.

Copyright law is acknowledged to be inadequate in relation to the complexities of software use. EDUCOM, a nonprofit organization that supports the use of technology in education, launched the EDUCOM Software Initiative, which

developed a statement of principle intended for adaptation and use by individual colleges and universities. It is here reproduced in full:

## **The EDUCOM Code**

### Software and Intellectual Rights

Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgment, right to privacy, and right to determine the form, manner, and terms of publication and distribution.

Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments. Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.

### Common Questions:

Is it all right to use a single-user licensed software disk on multiple computers for use at the same time?

No. If simultaneous use on multiple computers is necessary, ask the BG librarians about the possibility of a site licensing arrangement with the vendor. Another possibility is that the vendor may offer a price break for multiple copies or "lab packs".

What about borrowing software to load into the hard disk memory of my personal computer?

While the memory capacity of personal computers makes this very tempting, it is not within the realm of fair use unless you delete it from your computer when you return the borrowed copy. The point is that only one person at a time may use single-user licensed software.

This document was compiled and written by Rachel Klug.  
November 26, 2007