

COPYRIGHT

Summary of the Law Concerning Public Schools

BACKGROUND

Copyright is the legal protection that gives to the owner of the copyright the ability to control the public distribution of a creative product. Copyright does not protect ideas, but rather it protects the expression of ideas embodied in creative products, such as literary works, music, artwork, and motion pictures.

Copyright law gives to the owner of the copyright the right to control:

- 1) the reproduction and distribution of the creative product;
- 2) all works based on or derived from the creative product;
- 3) public performances and displays of the creative product; and
- 4) the sale of the creative product.

Copyright law recognizes certain education-related exceptions which protect a teacher's ability to use copyrighted materials in the classroom to benefit students. The two most important education-related exceptions are "fair use" and face-to-face teaching.

FAIR USE

The use of copyrighted materials for a public purpose may be considered "fair use" and not a copyright violation. Among those settings where the use may be considered fair use is the classroom setting, serving the public purpose of instructing students. In order to determine whether a particular school use is fair use, four factors should be considered:

- 1) how the work is being used (consider: is it being used to teach students?);
- 2) the kind of work being used (consider: is the work informational or creative? – creative works may receive greater protections);
- 3) how much of the work is being used (consider: how much of the work is being copied, and how much of the substance?); and
- 4) the economic impact on the owner of the copyright (consider: is the creator of the work losing out on profits, or losing the ability to publish or present the work in his or her own way?).

Federal guidelines on fair use prohibit teachers from:

- 1) copying materials to substitute for the purchase of individual materials;
- 2) copying "consumables" (e.g., workbooks);
- 3) charging students more than the cost of the copy;
- 4) copying without notice of copyright; and
- 5) excessive copying (e.g., copying whole books).

FACE-TO-FACE TEACHING

Use of copyrighted works is not an infringement of the copyright when used during face-to-face instruction if:

- 1) it is conducted by a teacher or student
- 2) in a classroom or similar place
- 3) during class instruction that is not transmitted
- 4) and is of lawfully made works.

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Use of Videos in Public Schools

Question-- Can a school show a video either rented or purchased or a program that has been taped from TV and brought in for a group of students to view (assuming proper permission was not obtained by the copyright holder)?

Answer-- Yes, if certain rules are followed. Congress has passed laws concerning the use of copyrighted materials, and the laws include specific rules for schools which cover the purchasing or renting of videos for use in the school setting. Such use is thus controlled by federal law. In addition, in 1979 Congress appointed a committee made up of educators, copyright proprietors, and others to develop guidelines for the school use of copyrighted shows taped from TV and used in schools. The guidelines developed by this committee do not have the force of law and are intended to guide, not control, the use of taped programs for school use.

FEDERAL LAW

A bought or rented video –

- 1) Can be used by a teacher/instructor in public schools for actual face-to-face classroom instruction
- 2) Cannot be used in a lesson broadcast to others not physically in the classroom
- 3) Cannot be used in schools if the teacher/instructor knows that the video was illegally made or obtained
- 4) Cannot be used simply to entertain or reward a class or group of students or for other non-instructional reasons
- 5) Cannot be used by the school or teacher for profit

FEDERAL GUIDELINES

Taping a TV program for use in a classroom –

- 1) May be done by a school at the specific request of a teacher, or by the teacher himself or herself
- 2) Should be used by individual teachers for “relevant teaching activities”
- 3) Should be used by the teacher only once (or, if necessary, repeated one additional time to reinforce the lesson)
- 4) Should not be done of the same program by the same teacher more than once, even if the show is rebroadcast
- 5) Should be of a broadcast program, i.e. a program broadcast to the general public free of charge (including simultaneous cable retransmissions)
- 6) Should be used by the teacher within 10 school days of taping
- 7) Should be erased or destroyed within 45 calendar days of taping

**For more information, contact
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