

REPRODUCTION OF COPYRIGHTED MATERIALS:
INTERPRETATION FOR EDUCATORS IN PORTSMOUTH CITY PUBLIC SCHOOLS

I. Introduction

Teachers and administrators in Portsmouth City Public Schools desire to provide students with access to quality materials at the lowest cost possible. The copyright law does provide fair use limits for educators who need to use copyrighted works. This document represents the interpretation of the copyright law for Portsmouth City Public Schools (classified as nonprofit educational institutions). The best option is to plan in advance and to receive written permission from publishers to use copyrighted material. In seeking such permission, the request should include:

1. Title, author(s) or editor(s), edition number;
2. Exact amount (pages) of material to be used, preferably including a photocopy of the material involved;
3. Number of copies to be made;
4. Description of how material will be used, for what purpose and/or course and frequency of use if for more than one occasion; and
5. Type of duplication (photocopy, ditto, etc.).

II. Photocopying

A. **Single Copy**: Teachers preparing to teach a class may make or request to have made a single copy of:

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

B. **Multiple Copies**: **Teachers desiring to duplicate a copy of a work for each student must include a notice of copyright with each copy AND meet these three tests:**

1. BREVITY TEST:

For poetry: a copy of a poem if less than 250 words and if printed on no more than two pages, or no more than 250 words if from a longer poem;

For prose: any complete story, essay or article less than 2,500 words; or excerpts 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 these numeric limits may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

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For special, shorter works, so designated because they contain illustrations (e.g. children's stories) the works may not be copied in their entirety even though they contain less than 2,500 words. Educators may copy no more than two published pages such special work and containing no more than 10% of the text thereof.

For illustrations: no more than one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

2. Spontaneity Test:

The inspiration of the individual teacher to use the work must occur soon prior to classroom use, and that it would not be reasonable for the teacher to write for an receive permission to duplicate the material. The teacher must request the copying and not as directed by an administrator.

3. Cumulative Effects Tests:

- Copies of the material must be for only one course in the school in which copies are made;
- No more than one short poem, article, story, essay or two excerpts may be copies from the same author;
- No more than three copies from the same collective work or periodical during one class term;
- There must not be more than nine instances of such multiple copying for one course during one class term.

NOTE: The above cumulative effects tests do not apply to current news periodicals and newspapers and current news sections of other periodicals.

4. ALWAYS PROHIBITED regardless of the otherwise permissible use:

- Educators may not through photocopying create or replace or substitute for anthologies, compilations or collective works whether brought together in one collection or reproduced and used separately;
- Copying must not substitute for the purchase of books, periodicals, or reprints. There shall be no copying of consumable materials in the course of study or of teaching. This includes workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material;
- The teacher must not duplicate the same item from one term to another; and

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- No charge shall be made to the student beyond the actual cost of the photocopying.

III. Music

A. Permissible Copying

1. Educators are permitted to make copies of music in an emergency 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.
2. For academic purposes other than performances, a teacher or researcher may duplicate a single copy of an entire “performable unit” (section, movement, aria, etc.) if that unit is unavailable except in a larger work and if it is out of print, as confirmed by the copyright proprietor. For other nonperformance educational purposes, multiple copies of no more than 10% of the whole work may be made as long as the excerpt does not comprise a performable unit. This multiple copying should not exceed one copy per student.
3. Printed copies of purchased music may be edited or simplified except for alterations of lyrics or addition of lyrics if none exist.
4. A single copy of a sound recording of copyrighted music may be made for use in “constructing aural exercises or examinations.” This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.
5. A single copy of a recording of performances by students is permissible for evaluation or rehearsal purposes and may be retained by the teacher or educational institution.

B. Prohibited Copying

1. To create or replace or substitute for anthologies, compilations or collective works.
2. Copying from works intended to be “consumable” in the course of study, such as workbooks, exercises, standardized tests and answer sheets.
3. For the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A (1) and A (2) above.

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5. Copying without inclusion of the copyright notice which appears on the printed copy.

IV. Photocopying by Library Media Staff

- Copying is to take place only at the specific request of users or other libraries.
- Employees are permitted to make a single copy of a work as long as the library receives no financial gain, and affixes notice of copyright on all duplicated works.
- In addition to the above requirements, the library media center may make copies only under the following conditions:
 - Duplicating in facsimile form a published, copyrighted work that is damaged, deteriorating, lost or stolen if there is not reasonable possibility for replacement.
 - Recordings are to be shown to students no more than twice during a 10-day period. The second showing shall be for instructional reinforcement only.
 - After the 10-day period, the recordings may be viewed only by teachers.
 - If several teachers request videotaping of the same program, duplicate copies are permitted. (ALL copies are subject to the same restrictions as the original).
 - Off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but not have to be shown in their entirety.
 - Schools may not build library compilations of video or television programs.

V. From Public Broadcasting Services

Four public broadcasting services drew up a joint policy statement that allows school specific videotaping privileges for their production: Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, Agency for Instructional Television. Educators may record broadcasts from these agencies under the following conditions:

- Recordings may be made only by students, faculty or staff members in accredited, nonprofit education institutions.
- Recordings may be used only for instruction or educationally related activities in a classroom, laboratory, or auditorium.

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- Recordings may be used only in the school for which they were made.
- The recordings may be used “only during the seven day period of local ETV and other educational broadcast licensed by the distribution agency, and will be erased or destroyed immediately at the end of the period.
- All requests for taping must come directly from teachers and must be shown only to students and faculty for instructional purposes.

VI. Television Broadcasts Taped by Teachers

At this time there is no specific court ruling or legislation directly addressing this particular. A 1984 U.S. Supreme Court decision affirmed the “fair use” of individuals using videocassette recordings from television in their homes. This right was upheld primarily on the basis of “private noncommercial time-shifting in the home.” The majority did not address the use of privately taped-programs for public performances or for education purposes.

VII. Videocassette Programs Rented, Purchased or Taped at Home by Teachers

- Programs must relate to specific objectives in the classroom program of studies and/or SOLs.
- Programs may not be used for recreational or entertainment purposes.
- Programs purchased by the school or teacher and marked “For Home Use Only” may not be used in the classroom unless the merchant provides a written and signed release form giving permission for classroom use.
- Teachers may not tape a program at home from either a broadcast or cable transmission for use in the classroom. Refer to the two sections above for allowable taping from commercial and cable transmission.
- Use of programs from direct broadcast must be approved by the principal, division level curriculum specialists or department chairperson.
- No video with an “R” rating can be shown under any circumstance.

VIII. Penalties for Infringement of Copyright

Educators who infringe the rights of copyright holders may be sued. The legal or insurance protection of Portsmouth City Public Schools will not be extended to employees who knowingly violate copyright laws.

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Educators should be aware that criminal charges of copyright violation can be brought. Those found guilty of “willfully infringing a copyright for private or commercial financial gain” could be fined up to \$100,000 or imprisoned for up to one year or both.

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