

Category:	Procedure:	
Instructional Goals and Objectives	Use of Copyrighted Materials in Educational Settings	
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INTRODUCTION

All employees shall adhere to the provisions of the United States Code regarding the copying, distribution, and/or use of copyrighted materials. Any other use requires written permission from the holder of the copyright.

Copyrighted materials may include, but are not limited to, the following:

- Curriculum materials and their ancillary products
- Print materials such as books, magazines, newspapers, or journals
- Graphic materials such as photographs, illustrations, or logos
- Audiovisual materials such as videos or sound recordings (in any format)
- Digital materials such as eBooks, databases, or other subscription products
- Online materials such as website content or social media posts

Any copyrighted materials beyond the state-approved adopted curriculum must be selected in compliance with Board of Education Policy I-211, “Selection of Instructional Materials other than Textbooks.”¹

FAIR USE

Fair use permits the limited unlicensed use of copyright-protected works in certain circumstances, as codified in Section 107 of the Copyright Act.² It defines a four-factor test federal judges use to determine whether any particular case is a fair use:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

Because only a judge can definitively determine fair use, there are no firm “rules of thumb” as to how a copyrighted work can be fairly used in an educational setting. Teachers, administrators, and instructional supervisors/specialists should collaborate to do due diligence in striving for fair use, applying the whole four-factor test to any desired use of a copyrighted material.

PUBLIC PERFORMANCE OF AUDIOVISUAL WORKS

Section 110 of the Copyright Act³ permits the performance or display of a work by educators or students in the regular course of face-to-face instruction, as long as that work has not been illegally copied. The instructional usage of the material, not the method of acquiring it (i.e. borrowed from a library, brought from home, purchased from a certain vendor or type of budget, etc.), determines permission to show it.

In order to comply with the public performance exception, audiovisual works should not be presented to students during instructional time under any circumstances in the following non-instructional ways:

- a. For entertainment/reward purposes
- b. During field trips, including travel time on bus trips
- c. As an incentive for completing assignments or good behavior
- d. For facilitating a teacher group meeting for administrative duties such as grade-level planning, preparation of grades, end-of-year duties, etc.
- e. By a substitute teacher unless the audiovisual work is contained within the regular class lesson plan or syllabus
- f. During any other school-sponsored activity in instructional time

Audiovisual works may be shown in the above non-instructional ways if and only if both of the following conditions are met:

- a. The showing is outside of the school day
- b. The school has purchased public performance rights for the showing through a reputable licensing company

Vendors and providers of digital content services (for instance, streaming video) may place additional terms or restrictions on public performance beyond what is noted in the Copyright Act as part of their user agreements. Individual users are responsible for understanding and complying with these agreements.

ADDITIONAL GUIDANCE FOR DIGITAL DELIVERY OF INSTRUCTION

The TEACH Act of 2002⁴ clarified Section 110 of the Copyright Act as it applies to instruction delivered via digital technology. In digital settings, copyrighted materials should be used in ways that are as similar to face-to-face settings as possible:

- Works can be performed or displayed in ways directly analogous to how they would be used in a face-to-face setting
- Performance or display of works should be guided and supervised by educators, and used only in ways necessary to meet instructional goals
- The portion of the work made digitally available should be the same portion of the work that would be used in a face-to-face setting
- To the extent possible, password protection and/or other technological tools should be used to limit digital access to a) the students enrolled in the course and b) the educators who need it for their work.

EDUCATOR RESPONSIBILITIES

All educators are responsible for adhering to the law in their use of copyrighted materials. Teachers will model responsible and ethical use of these materials in their instructional practice, and they will instruct students on responsible and ethical practice in cases where their assignments may involve the creative use, sharing, repurposing, or remixing of copyrighted content.

The Human Resources Department will require that all employees read the Knox County Schools' *Guidelines for the Use of Audiovisual Works*⁵, and sign the *Acceptable Use of Audiovisual Works Agreement*⁶ as part of their staff onboarding.

References:

1. Knox County Board of Education Policy I-211 "Selection of Instructional Materials other than Textbooks."
2. U.S. Code Unannotated Title 17. Copyrights § 107. Limitations on exclusive rights: Fair Use.
3. U.S. Code Unannotated Title 17. Copyrights § 110. Limitations on exclusive rights: Exemption of certain performances and displays.
4. Pub. Law. 107-273, 116 Stat. 1758, Title III, Subtitle C § 13301.
5. Form MC-100 Guidelines for the Use of Audiovisual Works.
6. Form MC-101 Acceptable Use of Audiovisual Works Agreement.