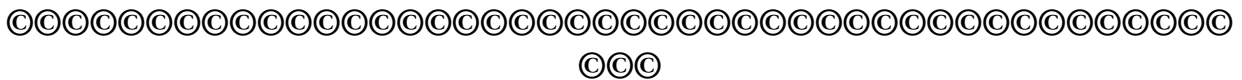


**COPYRIGHT GUIDELINES HANDBOOK  
2009**

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## INTRODUCTION

The East Stroudsburg Area School District (“the School District”) recognizes that copyright abuse and piracy is a serious problem, with legal implications and possible severe penalties. The School District has developed and adopted a Copyright Policy and a Copyright Guidelines Handbook. This Policy and the Handbook must be complied with by all employees, students, guests, visitors and independent contractors.

The Copyright Policy number 814 can be found in the School District Policy Manual located on the East Stroudsburg Area School District website. A copy is also included in Appendix 4 of this Handbook for your reference. This Handbook is intended as a guide to the School District employees, students, guests, visitors and independent contractors in dealing with issues that may arise under the copyright laws as they fulfill their daily responsibilities. Any individual having any questions in regard to an interpretation of a matter covered in the Policy and/or Handbook, or any questions concerning copyright issues not addressed in the Policy and Handbook are expected to direct such questions to the Superintendent or designee.

While the School District encourages individuals to enrich learning programs by making proper use of instructional materials, it is the responsibility of all the School District personnel to abide by the School District copying procedures and to obey the requirements of the law. Under no circumstances shall it be necessary or appropriate/acceptable for users of the School District to violate copyright requirements in order to perform their duties properly.

Therefore, the School District shall not be responsible for or provide legal support for any violation of the copyright laws by its employees, students, guests, visitors and independent contractors. The School District does not sanction nor condone unlawful duplication in any form and any individual violating the School District copyright position does so at his or her own risk, and assumes all liability and responsibilities.

Users are also informed that violations of the copyright laws may be a crime and that the law allows the court to hold individuals personally responsible for infringing the law. Appropriate copyright notices must be placed on or near all the School District equipment capable of making copies.

The material contained in the Handbook is based on a professional interpretation of the copyright law as it pertains to education, but is not a substitute for legal advice. Whenever a user encounters an issue relating to copyright, an attorney should be consulted to ensure that the decision reflects the latest and most precise understanding of the law.

# COPYRIGHT GUIDELINES HANDBOOK

## I. THE COPYRIGHT ACT

### A. *Definitions*

#### 1. *Accreditation*

With respect to a nonpublic educational institution providing elementary or secondary education, accreditation is recognized based on the applicable state certification or licensing procedures.

#### 2. *Analog*

A device or system that represents continuous physical qualities. A format transmitted by modulating a continuous transmission signal.

#### 3. *Available*

Not the same as saying “purchased”, “licensed” or in the possession of, but rather available in the marketplace and that the technical protection requirement allowing digitalization of analog copies can be triggered by an institution’s ascertaining that the digital copy available to it is technologically protected, not necessarily by purchasing it.

#### 4. *Audiovisual Works*

Works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

#### 5. *Collective Work*

Works, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

#### 6. *Compilation*

A work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

#### 7. *Computer Program*

A set of statements or instructions to be used directly or indirectly on a computer in order to bring about a certain result.

8. *Copies*

Material objects, other than phonorecords, in which a work is fixed by any method, now known or later developed, and from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

9. *Derivative Work*

A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. The work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative” work.

10. *Digital File*

A device or system that represents discontinuous data or events. All data that a computer processes must be encoded digitally.

11. *Display*

To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonconsequentially.

12. *Literary Works*

Works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

13. *Mediated Instructional Activities*

Relates to the performance or display of a work by digital transmission under the TEACH Act and refers to activities that use such works as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in one or more class sessions of a single course, such works as textbooks, course packets, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

14. *Motion Pictures*

Audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

15. *Multimedia*

In general, multimedia projects are stand-alone, interactive programs incorporating both original and pre-existing copyrighted works in various media formats, while visual image archives are databases of individual visual images from which images intended for educational use may be selected for display.

16. *Perform*

To recite, render, play, dance or act a work, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

17. *Photocopy Machine Notice*

The following notice is required to be displayed on or near all library or archival equipment capable of duplicating copyrighted materials. This notice must be visible to anyone using the device:

“NOTICE: The copyright law of the United States (Title 17, U.S. Code) governs the making of copies of copyrighted materials. The person using this equipment is liable for all infringement.”

18. *Phonorecords*

Material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of the machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

19. *Sound Recordings*

Works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

20. *Pictorial, Graphic and Sculptural Works*

Two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined, must be considered a pictorial, graphic or sculptural work only if, and only to the extent that, the design incorporates pictorial, graphic or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspect of the article.

21. *Standard Technical Measures*

Technical measures that are used by copyright owners to identify or protect copyrighted works that: (a) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process; (b) are available to any person on reasonable and non-discriminatory terms; and (c) do not impose substantial costs on service or substantial burdens on systems or networks.

## 22. *Technological Protection Systems*

The measures that prevent unauthorized access and measures that prevent infringement. This term is generally used to refer to a range of technological methods to control unauthorized access to and copying of digitalized copyrighted works. Two categories are generally recognized: Core Technologies and Digital Rights Management Systems. Examples of Core Technologies include encryption, digital watermarking and authentication. Examples of Digital Rights Management Systems include trusted computer systems, rights models and rights expression languages and digital rights management architecture.

## 23. *To Perform or Display a Work Publicly*

(1) To perform or display a work at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified in (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

## 24. *Transmit*

To communicate a performance or a display by any device or process whereby images or sounds are received beyond the place from which they are sent.

## 25. *Work of Visual Art*

(1) A painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple casts, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include (1) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication; any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container; any portion or part of any item described in this sentence; (2) any work made for hire; or (3) any work not subject to copyright protection under the copyright laws.

## 26. *Work Made-for-Hire*



A work prepared by an employee within the scope of his or her employment; or a work specifically ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made-for-hire. For the purpose of this definition, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forwards, afterwards, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and any “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

### ***B. Copyrights Protected***

1. Copyright protection applies to original works of authorship fixed in a tangible medium of expression that can be perceived, reproduced, or communicated, either directly or with the aid of a machine or device.
2. Works protected by copyright include the following categories:
  - a. Literary works,
  - b. Musical works, including any accompanying words,
  - c. Dramatic works, including any accompanying music,
  - d. Pantomimes and choreographic works,
  - e. Pictorial, graphic and sculptural works,
  - f. Motion pictures and other audiovisual works,
  - g. Sound recordings, and
  - h. Architectural works.
  - i. The author of some visual arts may possess rights of attribution and integrity.

### ***C. Not Protected***

1. Regardless of the form in which it is described, explained, illustrated, or embodied in the work, the following are not protected by copyright law:
  - a. Ideas,
  - b. Procedures,
  - c. Processes,
  - d. Systems,
  - e. Methods of operation,
  - f. Concepts,
  - g. Principles, or
  - h. Discoveries.

***D. Exclusive Rights of the Copyright Owner in the Copyrighted Work***

The rights granted solely to the copyright owner include the following rights:

1. The right to reproduce the copyrighted work in copies or phonorecords;
2. The right to prepare derivative works based upon the copyrighted work;
3. The right to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. In the case of literary, musical, dramatic, and choreographic works, pantomime, and motion pictures, or other audiovisual works, the right to perform the copyrighted work publicly;
5. In the case of a literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, sculptural works, including the individual images of a motion picture or other audiovisual work, the right to display the copyrighted work publicly; and
6. In the case of sound recordings, the right to perform the work publicly by means of digital audio transmission.

***E. Prior Permission from the Copyright Owner***

Employees and students must obtain permission from the copyright owner to use any work that does not meet the exceptions permitted by the School District Copyright Policy.

***F. License Agreement***

School District employees and students must comply with the terms of any license agreement for any software and/or other copyrighted materials used in the School District.

***G. Fair Use***

Fair use of copyrighted materials, including the reproduction of copies and phonorecords, for such purposes as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, must be determined by considering the following factors:

1. THE PURPOSE AND CHARACTER OF THE USE, including whether such use is of a commercial nature or is for non-profit commercial purposes.
  - a. The use must be for such purposes as teaching or scholarship and must be nonprofit.
  - b. If the work is being copied for such things as news reporting, criticism, teaching, scholarship or research, then this factor will generally favor a finding of fair use. On the other hand, if the use is of a commercial nature, then this factor will generally lean against a finding of fair use.
2. THE NATURE OF THE COPYRIGHTED WORK.
  - a. Staff may make single copies of: book chapters for use in research, instruction or preparation for teaching.
  - b. If the work copied is informational in nature (as opposed to creative), then this factor leans more toward a finding of fair use. On the other hand, the more creative or expressive the copied work, the more this factor will lean against a finding of fair use.
3. THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED IN RELATION TO THE COPYRIGHTED WORK AS A WHOLE.
  - a. If only a small portion of the work is copied, then this factor will generally favor a finding of fair use. On the other hand, if the work is copied in its entirety, then this factor will generally lean against a finding of fair use.
4. THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK.
  - a. This factor is generally recognized as the most important one. If, by copying the work – or any portion of it – the copyright owner is deprived of an opportunity to make money, that is, if the copied work (or portion thereof) could have been purchased from the copyright owner (or its agent) – then that will weigh heavily against a finding of fair use. On the other hand, if what was copied is not otherwise available from the copyright owner (or its agent), whether as a reprint, through a rights agreement or otherwise, then this factor will lean toward a finding of fair use.
  - b. If resulting economic loss to the copyright holder can be shown, making even a single copy of certain materials may be an infringement; and making multiple copies presents the danger of greater penalties.

## *H. The TEACH Act<sup>1</sup>*

The TEACH Act was passed by Congress to authorize the digitalization of portions of documentaries on analog tape for purposes of distance learning programs. The TEACH Act is an acronym for Technology, Education, and Copyright Harmonization Act. The TEACH Act primarily facilitates educators' use of copyrighted materials for distance learning. Importantly, the TEACH Act provides that, by complying with some requirements, accredited non-profit educational institutions may, without infringing copyright, use certain copyrighted works without permission from, or paying royalties to, the copyright owners. It specifies exactly which types of works may be used and which may not. The TEACH Act limits the conditions under which analog materials may be digitalized. They are: (1) when no digital version is available to the School District, or (2) the digital version of the work available is subject to technological protection measures, the circumvention of which would violate the Digital Millennium Copyright Act, and (3) reasonable and limited portions of works may be digitalized for the performance of copyrighted works.

The TEACH Act allows for the inclusion of performances and displays of copyrighted works in digital distance education under appropriate circumstances and subject to certain limitations. The TEACH Act expands the category of works exempt from the performance right, from nondocumentary literary works and musical works to "reasonable and limited portions" of any work and permits the display of a work in "an amount comparable to that typically displayed in the course of a live classroom setting." The TEACH Act removes the concept of the physical classroom, while maintaining the requirement of "mediated instructional activity" which generally requires the involvement of an instructor. The exemption is limited to mediated instructional activities that are conducted by the School District, and other governmental bodies and accredited non-profit educational institutions. In addition, the TEACH Act permits transmitting organizations to store copyrighted materials on their servers in order to allow the performances and displays of works authorized under the TEACH Act.

The TEACH Act contains a number of new safeguards to limit the additional risks to copyright owners that are inherent in using works in a digital format. The TEACH Act limits the receipt of authorized transmissions to students officially enrolled in the course or to government employees as part of their official duties "to the extent technologically feasible." With respect to "digital transmissions," transmitting institutions must apply technological measures that reasonably prevent "retention of the work in accessible form by recipients of the transmission... for longer than the class session" and "unauthorized further dissemination of the work in accessible form by such recipients to others." The statute also prohibits transmitting

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<sup>1</sup> S. 487 June 5, 2001, amends 17 USC § 110 and 17 USC § 112.

institutions from engaging in “conduct that could reasonably be expected to interfere” with technological measures used by copyright owners to regulate the retention and further unauthorized dissemination of protected works.

**1. Requirements that will likely fall within the duty of the School District:**

- a. The institution for which the work is transmitted is a school district, governmental body, or accredited non-profit educational institution.
- b. The School District has instituted a policy regarding copyrights.
- c. The School District has provided information materials to faculty, students, and relevant staff members that accurately describe and promote U. S. Copyright Laws.
- d. The School District has provided notice to students that materials used in connection with the course may be subject to copyright protection.
- e. The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.
- f. The School District may not convert material from analog into a digital format except under the following circumstances:
  - (1) The amount converted is limited to the amount of appropriate works that may be performed or displayed according to the TEACH Act.
  - (2) A digital version is not available to the School District or a digital version is available, but it is secured behind technological protection measures that prevent its availability for performing or displaying in the distance education program consistent with the TEACH Act.

**2. Requirements that will likely fall under the duty of the instructor:**

- a. The works to be transmitted are explicitly permitted which means that they are:
  - (1) Performances of nondramatic literary works;
  - (2) Performances of nondramatic musical works; and/or

- (3) Performances of any other work, including dramatic works and audiovisual works, but only in “reasonable and limited portions”; and
  - (4) In each case, an amount comparable to that which is typically displayed in the course of a live classroom session.
- b. The works explicitly excluded from transmission are:
  - (1) Works that are marketed primarily for performance or display as part of mediated instructional activities transmitted by digital networks; and
  - (2) Performances or displays given by means of copies not lawfully made and acquired under U.S. Copyright Law, if the School District knew or had reason to believe that they were not lawfully made and acquired.
- c. Performances and displays involving a digital transmission must be in the context of mediated instructional activities. The works to be used may not be textbooks, course packets, or other material in any media which is typically purchased or acquired by students for their independent use and retention.
- d. The instructor seeking to use materials under the protection of the TEACH Act must adhere to the following requirements:
  - (1) The performance or display is made by, at the direction of, or under the actual supervision of an instructor.
  - (2) The performance or display is an integral part of class session offered as a regular part of the systematic, mediated, instructional activities of the School District.
  - (3) The copyrighted materials are directly related and of material assistance to the teaching content of the transmission.

**3. Requirements that will likely fall within the duty of the information technology officials:**

- a. The School District limits the transmission to students enrolled in the particular course, to the extent technologically feasible.
- b. The School District deploying “digital transmissions” is applying reasonable technological measures to prevent retention of the works in accessible form by recipients of the transmission for

- c. If the content transmitted through digital transmissions includes restrictive codes, or other imbedded management systems to regulate storage or dissemination of the works, the School District may not engage in conduct that would reasonably be expected to interfere with those technological measures.
- d. The work may not be maintained on the system or network for availability to the students for a longer period than is reasonably necessary to facilitate the transmission for which it was made.
- e. The work may not be stored or maintained on a system or network where it may be accessed by anyone other than the anticipated recipients.
- f. The School District may retain copies of its digital transmissions that include works permitted under the TEACH Act but those copies must be used solely for transmissions permitted by the TEACH Act.

## ***I. Special Exceptions From Liability***

### **1. Fair use**

In general, if the School District falls within these Guidelines, its activities likely qualify as “fair use.” However, the general principles of “fair use” are still available. The Guidelines merely offer examples that representatives of both publishers and educators agree could be fair uses.

- a. Minimum Guidelines for Classroom Copying in School District and Not-for-Profit Educational Institutions; Copying from Books and Periodicals<sup>2</sup>

The following minimum guidelines apply to classroom copying and not-for-profit educational institutions.

#### Permitted Copies

- (1) Single copies may be made of a chapter in a book, an article from a periodical or newspaper, a short story, short

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<sup>2</sup> Legislative History for Copyright Act of 1976 – House Judiciary Committee, Report No. 94-1476; House Conference Committee Report No. 94-1733.

essay or short poem, whether or not from a collective work; a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper, by or for teachers at their individual request for his or her scholarly research, use in teaching or preparation to teach a class.

(2) Multiple copies (not exceeding more than one copy per student in a course) may be made by or for the teacher giving the course for classroom use or discussion, providing that;

- (a) The copying must meet the tests of brevity, spontaneity and cumulative effect defined below, and
- (b) Each copy must include a notice of copyright.

Definitions:

(3) Brevity

- (a) Poetry: a complete poem, if less than 250 words and if no more than two pages long, or from a longer poem an excerpt of not more than 250 words may be reproduced. The numerical limits may be expanded to permit the completion of an unfinished line of a poem.
- (b) Prose: either complete articles, stories or essays of less than 2,500 words, or excerpts from prose works not more than 1,000 words or ten percent of the work, whichever is less, but in any event a minimum of 500 words may be reproduced. The numerical limits may be expanded to permit the completion of an unfinished prose paragraph.
- (c) Illustration: one chart, graph, design, drawing, cartoon or picture per book or per periodical issue may be reproduced.
- (d) “Special” Works: certain works in poetry, prose, or in “poetic prose”, which often combine language with illustrations and are intended for children and at other times for a more general audience fall short of 2,500 words. Notwithstanding the above requirements relevant to prose, these “special works” may not be reproduced in their entirety. An excerpt of not more than two of the published pages



- (4) Spontaneity
  - (a) The copying must be at the instance and inspiration of the individual teacher, and
  - (b) 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.
- (5) Cumulative Effect
  - (a) The copying of the material is for only one course in the school in which the copies are made.
  - (b) No more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor may more than three from the same collective work or periodical volume be reproduced during one class term.
  - (c) There may not be more than nine instances of multiple copying for one course during one class term.
  - (d) The limitations in subsection (a) and (b) do not apply to current news periodicals, newspapers and current news sections of other periodicals.

#### Prohibited Copies

- (6) Copying may not be used to create or to replace or substitute for anthologies, compilations, or collective works. The replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- (7) No copying of or from works intended to be “consumable” in the course of study or of teaching is permitted. These include, but are not limited to: workbooks, exercises, standardized tests, test booklets and answer sheets.

Copying must not:

- (8) Substitute for the purchase of books, publishers' reprints or periodicals;
- (9) Be directed by a higher authority; or
- (10) Be repeated with respect to the same item by the same teacher from term to term.
- (11) No charge may be made to the student beyond the actual cost of the photocopying.

## 2. **Minimum Guidelines for Educational Uses of Music** <sup>3</sup>

- a. The following Guidelines apply to reproductions of musical works.

### Permissible Uses

Reproductions may be made for:

- (1) Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
- (2) For academic purposes other than performance,
  - (a) multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit, such as a section, movement, or aria, but in no case more than ten (10) percent of the whole work. The number of copies may not exceed more than one copy per pupil.
  - (b) a single copy of an entire performance unit (section, movement, aria, etc.) that is: (1) confirmed by the copyright proprietor to be out of print, or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
- (3) Printed copies that have been purchased may be edited or simplified provided the fundamental character of the work

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<sup>3</sup> Legislative History for Copyright Act of 1976 – House Judiciary Committee, Report No. 94-1476; House Conference Committee Report No. 94-1733.

is not distorted or the lyrics, if any, altered or lyrics added if none existed.

- (4) A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the School District or individual teacher.
- (5) A single copy of a sound recording (such as a tape, disk or cassette) of copyrighted music may be made from sound recordings owned by the School District or an individual teacher for the purpose of constructing aural exercises or examinations and they may be retained by the School District or individual teacher. This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.

#### Prohibitions

The following activities are prohibited:

- (1) Copying to create or replace or substitute for anthologies, compilations or collective works.
- (2) Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests, answer sheets and like materials.
  - (a) Copying for the purpose of performance, except for emergency copying for an imminent performance, so long as purchased replacement copies are substituted in due course.
  - (b) Copying for the purpose of substituting for the purchase of music, except for 2a (1) & (2) above.
  - (c) Copying without inclusion of any copyright notice which appears on the printed copy.
  - (d) Schools must be licensed to play copyrighted music where the performer is paid or admission is charged, even if the admission is used solely to cover refreshment costs.

### 3. Minimum Guidelines for Off-Air Recordings <sup>4</sup>

- a. Broadcast programs may be recorded off-air simultaneously with broadcast transmission (including cable transmission) and retained by the School District for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon the conclusion of this retention period, all off-air recordings must be erased or destroyed immediately. “Broadcast programs” are television programs transmitted by television stations (including cable television stations) for reception by the general public.
- b. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. “School days” are session days – not counting week-ends, holidays, vacations, examination periods, or other scheduled interruptions – within the forty-five (45) calendar day retention period.
- c. Off-air recordings may be made only at the request of, and use by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
- d. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these Minimum Guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
- e. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes by the teacher, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the school for student exhibition or any other non-evaluation purpose without authorization.
- f. Off-air recordings need not be used in their entirety; but the recorded programs may not be altered from their original content and they may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

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<sup>4</sup> U.S. House of Representatives Committee on Courts, Civil Liberties and the Administration of Justice – Negotiations Team on Guidelines of Off-Air Recordings (Sept. 1981).

- g. All copies of off-air recording must include the copyright notice on the broadcast program as recorded.
- h. The School District must establish appropriate control procedures to maintain the integrity of these guidelines.

#### **4. Reproductions by Libraries**

The following apply only to librarians and other employees of libraries, knowledge management, archives and media centers (collectively, “libraries”). They do not apply to users of such facilities.

- a. Lending Computer Software and Musical Recordings
  - (1) Non-profit libraries may rent, lease and/or lend musical recordings (known as “phonorecords”) for non-profit purposes without restriction.
  - (2) Non-profit libraries may rent, lease and/or lend computer programs for non-profit purposes if the following warning notice is affixed to that computer program’s packaging:

NOTICE  
WARNING CONCERNING  
COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance and public display of copyrighted material.

Under certain conditions specified in the law, non-profit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a non-profit basis and for non-profit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs and displays the computer program, except as permitted by Title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

b. Minimum Guidelines For Librarians <sup>5</sup>

- (1) A library or employee of a library acting within the scope of his or her employment may reproduce and distribute no more than one copy or phonorecord of a copyrighted work, except as stated in Subsection (2) and (3) below, or to distribute it under the specified conditions if:
  - (a) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
  - (b) the collections of the library are (a) open to the public, or (b) available not only to researchers affiliated with the library or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
  - (c) the reproduction or distribution of the work includes a notice of copyright.
- (2) The library may reproduce and distribute three copies or phonorecords of an unpublished work duplicated solely for the purposes of preservation and security or for deposit for research use in another library that is open to the public and available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field, if the copy or phonorecord is currently in the collection of the library, and the copy or phonorecord that is reproduced in digital format is not distributed in that format and is not made available to the public in that format outside the premises of the library.
- (3) The library may reproduce three copies of a published work that is duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen or if the existing format in which the work is stored has become obsolete, if the library has, after a reasonable effort, determined that an unused replacement cannot be obtain at a fair price, and the copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library in lawful possession of the copy.

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<sup>5</sup> 17 U.S.C. Sec. 108; 34 CFR Sec. 201.14; Legislative History for Copyright Act of 1976 – House Judiciary Committee Report No. 94-1476; Senate Judiciary Committee Report No. 94-473 and The Conference Report H.R. Rep. No. 94-1733.

For purposes of this subsection, a format is considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available to the commercial marketplace.

- (4) The library may reproduce and distribute a copy made from a collection of a library where the user makes his or her request or from another library of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy, or phonorecord of a small part of any other copyrighted work, if:
  - (a) the copy or phonorecord becomes the property of the user, and the library has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research and
  - (b) the library displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements of the Register of Copyrights.<sup>6</sup>

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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.

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

The Notice must be printed on heavy paper or other durable material in at least 18 point type and displayed prominently so that it is clearly visible, legible and comprehensible to a casual observer in the vicinity of the place where orders are accepted.

The Notice also must be printed within a box located prominently on the order form either on the front or immediately adjacent to the signature space of the person using the form. The type size must be the size of type used throughout the form and may not be smaller than 8 points. The Notice must be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

- (5) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library where the user makes his or her request or from that of another library, if the library has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if:
- (a) the copy or phonorecord becomes the property of the user, and the library has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
  - (b) the library displays prominently, at the place where orders are accepted, and includes on its order form a warning of copyright in accordance with requirements of the Register of Copyrights.<sup>7</sup>
- (6) Nothing in These Guidelines:
- (a) May be construed to impose liability for copyright infringement on a library or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, that the equipment displays a notice that the making of a copy may be subject to the copyright law;<sup>8</sup>
  - (b) Excuses a person who uses reproducing equipment or who requests a copy or phonorecord under subsection 4 above from liability for copyright infringement for any such act, or for any later use of the copy or phonorecord, if it exceeds fair use.
  - (c) Will be construed to limit the reproduction and distribution by lending a limited number of copies and excerpts by a library of an audiovisual news program, subject to subsection 4b(1) clauses (a), (b), (c) above, or
  - (d) In any way affects the right of fair use or any contractual obligations assumed at any time by the library when it obtained a copy or phonorecord of a work in its collections.

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<sup>7</sup> See footnote 6.

<sup>8</sup> See Section I A, Definitions, #17, Photocopy Machine Notice (p.3) for the Notice language.



- (7) The rights of reproduction and distribution under these Guidelines for Librarians extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library, or its employee –
- (a) Is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by the individual members of a group; or
  - (b) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection 4b(4) above: provided, that nothing in this clause prevents a library from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.
- (8) During the last 20 years of any term of copyright of a published work, a library, including a nonprofit educational institution, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in the below subsections apply, i.e., no reproduction, distribution, display, or performance is authorized if
- (a) The work is subject to normal commercial exploitation;
  - (b) A copy or phonorecord of the work can be obtained at a reasonable price; or
  - (c) The copyright owner, or its agent, provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth above applies.

- (9) The rights of reproduction and distribution under these Guidelines for Librarians do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation will apply with respect to rights granted by subsections 4b(2) (3) and (8) above or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections 4b(4) and 4b(5) above.

## **5. Minimum Guidelines for Educational Multimedia <sup>9</sup>**

### **a. Introduction**

Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities. Educators and students want guidance about the application of fair use principles when creating their own projects to meet specific instructional objectives.

### **b. Applicability of these Guidelines**

These Guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprofit educational institutions. Educational multimedia projects created under these Guidelines for Educational Multimedia incorporate students' or educators'

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<sup>9</sup> *Fair Use Guidelines for Educational Multimedia*, CONFU: The Conference on Fair Use, May 1998.

original material, such as course notes or commentary, together with various copyrighted media formats, including, but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. Educational institutions are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of these Guidelines for Educational Multimedia, educators include faculty, teachers, instructors and others who engage in scholarly, research and instructional activities for educational institutions. The copyrighted works used under these Guidelines for Educational Multimedia are lawfully acquired if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these Guidelines for Educational Multimedia may be used only for educational purposes in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under section 5d. below. While these Guidelines for Educational Multimedia refer to the creation and use of educational multimedia projects, in some instances other fair use guidelines such as those for off-air taping may be relevant.

**c. Preparation of Educational Multimedia Projects Using Portions of Copyrighted Works.**

These uses are subject to the Portion Limitations listed in section 5e. below. They should include proper attribution and acknowledgement as defined in section 5g(2).

(1) By students:

Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

(2) By educators for curriculum-based instruction:

Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support

**d. Permitted Uses of Educational Multimedia Projects Created Under These Guidelines.**

Uses of educational multimedia projects created under these Guidelines for Educational Multimedia are subject to the Time, Portion, Copying and Distribution Limitations listed in section 5e below.

(1) Student use

Students may perform and display their own educational multimedia projects created under section 5c. of these Guidelines for Educational Multimedia for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and post secondary school interviews.

(2) Educator use for curriculum-based instruction

Educators may perform and display their own educational multimedia projects created under section 5c for curriculum-based instruction to students in the following situations:

- (a) For face to face instruction,
- (b) As assigned to students for directed self-study, and/or
- (c) For remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN), and provided further that the technology prevents the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under section 5.c of

- (3) Educator use for peer conferences

Educators may perform or display their own educational multimedia projects created under section 5.c of these Guidelines for Educational Multimedia in presentations to their peers, for example, at workshops and conferences.

- (4) Educators use for professional portfolio

Educators may retain educational multimedia projects created under section 5c. of these Guidelines in their personal portfolios for later personal uses such as job interviews.

e. **Limitations – Time, Portion, Copying and Distribution**

The preparation of educational multimedia projects incorporating copyrighted works under section 5c and the use of such projects under section 5d, are subject to the limitations noted below.

- (1) Time limitations

Educators may use their educational multimedia projects created for educational purposes under section 5c of these Guidelines for Educational Multimedia for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in section 5d(1).

(2) Portion limitations

“*Portion limitations*” mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these Guidelines for Educational Multimedia regardless of the original medium from which the copyrighted works are taken. “In the aggregate” means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these Guidelines for Education Multimedia. These limitations apply cumulatively to each educator’s or student’s multimedia project(s) for the same semester. All students should be instructed about the reasons for copyright protection and the need to follow these Guidelines for Educational Multimedia. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under sections 5c(1) and 5d(6) should comply with the portion limitations in this section.

(a) Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational multimedia project created under section 5c of these Guidelines for Educational Multimedia.

(b) Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project created under section 5c of these Guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

(3) Music, Lyrics and Music Video

Up to 10% but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under section 5.c. Any alterations to a musical work must not change the basic melody or the fundamental character of the work.

(4) Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these Guidelines for Educational Multimedia, a photograph or illustration may be used in its entirety but no more than five (5) images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under section 5.c. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under section 5.c.

(5) Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under section 5.c of these Guidelines for Educational Multimedia. A “field entry” is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A “cell entry” is defined as the intersection where a row and a column meet on a spreadsheet.

(6) Copying and Distribution Limitations

Only a limited number of copies, including the original, may be made of an educator’s educational multimedia project. For all of the uses permitted by section 5.d.(2)(c), there may be no more than two use copies, only one of which may be placed on reserve as described in section

**f. Examples of When Permission is Required**

- (1) Using Multimedia Projects for Non-Educational or Commercial Purposes

Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

- (2) Duplication of Multimedia Project Beyond Limitations Listed in these Guidelines for Educational Multimedia.

Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed in section 5.e.(6).

- (3) Distribution of Multimedia Projects Beyond Limitations Listed in these Guidelines for Educational Multimedia.

Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in section 5.d.(2)(c) without obtaining permissions for all copyrighted works incorporated in the project.

**g. Important Reminders**

- (1) Caution in Downloading Material from the Internet

Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects because there is a mix of works protected by copyright and works in the public domain on the Internet. Access to works on the Internet does not automatically mean that these works can be reproduced and reused without



(2) Attribution and Acknowledgement

Educators and students are reminded to credit the sources and display the copyright notice and copyright ownership information (if this is shown in the original source), for all works incorporated as part of educational multimedia projects prepared by educators and students, including those prepared under fair use. 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 ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g., a credit or section or page) except for images incorporated into the project for the uses described in section 5.d.(2)(c). In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g., during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

(3) Notice of Use Restrictions

Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the

(4) Future Uses Beyond Fair Use

Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

(5) Reproduction or Decompilation of Copyrighted Computer Programs

Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these Guidelines for Educational Multimedia.

(6) Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information, are subject to a license or contract. Fair use and these Guidelines for Educational Multimedia do not preempt or supersede licenses and contractual obligations.

**6. Productions, Displays, and the TEACH Act<sup>10</sup>**

- a. Copies of materials for “face-to-face” teaching activities involving performances or displays made by students or instructors, live performances without commercial advantage and the use of instructional broadcasts are not prohibited. Face-to-face teaching is defined as a classroom setting or similar place devoted to instruction as part of an instructional activity.
- b. Schools must be licensed to play copyrighted music where the performer is paid or admission is charged, even if the admission is used solely to cover refreshment costs.
- c. TEACH Act – See Section H above.

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<sup>10</sup> 17 U.S.C. § 110 and 17 U.S.C. § 112.

## **7. Videotapes/Optical Discs/Audiovisual Delivery Devices**

- a. Recorded copies of copyrighted programs created or prepared by an educator, staff member, student or any other person, or a copy of a rental program may not be used for instruction purposes unless its use qualifies as a “fair use”, or is permitted under another Section of this Copyright Guidelines Handbook.
- b. Rental videocassettes, laser discs and other optical media that bear the “Home Use Only” warning label may not be used in a classroom, school assembly, or club unless specifically covered in the rental agreement, or such use qualifies as a “fair use”, or is otherwise permitted under another Section of this Copyright Guidelines Handbook.
- c. Multimedia uses of copyrighted material falls under the guidelines of the media being used (e.g. textual, computer, video, or audio).
- d. Distance learning is subject to copyright guidelines if copyrighted material is copied or recorded during a transmitted lesson and the TEACH Act.
- e. Closed-circuit distribution of a copyrighted work to classrooms in a school is legal, as long as the transmission is used for instructional activity and not entertainment.

## **8. Computer Software<sup>11</sup>**

- a. Copies of computer software (including those downloaded from the Internet), other than “public domain” software, must not be made without the permission of the vendor or copyright owner.
- b. Illegal copies of copyrighted software may not be installed, stored, made, used or distributed on or from school equipment.
- c. Unless otherwise permitted in an applicable license agreement, computer software may be legally copied only for the following reasons:
  - (1) It is created as an essential step in the use of the computer program, (such as automatic copying into memory when a program is loaded).
  - (2) It is created as a backup or archival copy only. All backup and archival copies must be destroyed in the event that the original program is erased or removed from inventory.

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<sup>11</sup> 17 U.S.C. § 117

- d. Backup or archival copies may not be used simultaneously with the original program.
- e. Copying a copyrighted program from a computer hard drive to a disk, for use as an additional copy, is illegal.
- f. Failure to strictly adhere to the license provisions of copyrighted software is prohibited.
- g. “Networking” computer software is also illegal if the legal multiple user or site licenses have not been acquired from the vendor or copyright owner. Networking is the use of a single program in a single computer that is connected to other computers, permitting the program to be used simultaneously in more than one computer.
- h. Reproduction of original computer software manuals is also illegal, and copying must abide by the “fair use” guidelines.
- i. It is not an infringement for the owner or the lessee of a machine to make or authorize the making of a copy of a computer program if the copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if
  - (1) the new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and
  - (2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, the program or part thereof is not accessed or used other than to make the new copy by virtue of the activation of the machine. “Maintenance” of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine. “Repair” of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.
- j. The School District will provide expenditures for software as a budgetary item. Priority will be given to software which supports and/or is critical to curriculum or operating needs. All other software will be purchased if reasonable need is established and/or financial resources allow such purchase.

- k. Renting or leasing computer software by individuals for use on the school system without the express permission of the school administration by the copyright owner is unlawful.
  - (1) Employees must register all software with the technology director, including software downloaded from the Internet on school computers. Employees must provide the title, the manufacturer, and the license for the software.

**9. Internet/Online**

- a. The School District does not condone the illegal or inappropriate use of materials subject to copyright protections that happens to be available through online systems and services that the School District makes available to its users. Users must be mindful of the copyright protections afforded to online materials and that violations of these protections may result in significant discipline and/or penalties.
- b. Computing equipment and software may be used only for educational purposes. Acceptable uses of the Internet are activities that support teaching and learning. See the School District Acceptable Use Policy.
- c. Users must follow the Copyright Act, Digital Millennium Copyright Act and, other laws relevant to them.
- d. All school policies, as well as Internet Service Provider, local, state and federal statutes, regulations and laws concerning the use of all software technology and content, including copyright protections, must be followed.
- e. Internet Publishing
  - (1) Copyright applies to images, graphics and words placed on the Internet in any form (multimedia and otherwise) or in distributing projects to others over electronic networks.
  - (2) Students and employees should:
    - (a) document sources;
    - (b) obtain permission from copyright holders;
    - (c) check to see if the source is in the public domain or available for free use (for example, government agencies); and

- (d) use their own graphics with original art or digital camera/video recorder.
- (3) The Fair Use Doctrine applies to online and Internet use.
- (4) Students and employees must not link to another web site and represent the other web site as their content, whether by deep-linking, framing or any other means.
- (5) A student or employee must notify the \_\_\_\_\_ at \_\_\_\_\_ about any infringing material on the School District's web site. Additionally, the designated person must respond to complaints and remove/disable materials that infringe the copyrights of others.
- (6) The School District is not and will not be liable for individual students' or employees' infringement of the ownership rights of others.
- f. The School District will use reasonable efforts/take appropriate steps to educate students and teachers in copyright compliance including making this Copyright Guidelines Handbook available.
- g. Internet services provided to employees and/or students may be terminated for infringement. Other disciplinary action may also be taken. The School District reserves the right to report any copyright infringement by a student or employee to the Internet Service Provider, and/or appropriate local, state or federal legal authorities. The School District will cooperate to the extent required by law in any investigation of copyright infringement.

## ***J. Liability***

### **1. Civil Penalties <sup>12</sup>**

The civil penalties for committing copyright infringement can be quite severe.

They include:

- a. Injunctive relief, forcing the infringer to stop doing the infringing conduct. This is one of the most common remedies sought.
- b. Impounding and destroying the infringing items.
- c. An award of the actual damages suffered by the copyright owner, plus an award of any profits made by the infringer that are

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<sup>12</sup> 17 USC § 412, 17 USC § 504, and 17 USC § 505.

attributable to the infringement, except that double counting is not allowed.

- d. If the copyright in the infringed work was registered before the infringement occurred, an award of statutory damages, which may be a sum up to \$30,000 per work infringed in normal cases, and up to \$150,000 per work infringed in cases of willful infringement, in each case, subject to the discretion of the court.
- e. If the copyright in the infringed work was registered before the infringement occurred, the prevailing party may be awarded its costs and attorney's fees subject to the discretion of the court.
- f. The seizure and civil forfeiture of all devices used to make the infringing copies, including all "electronic, mechanical or other devices for manufacturing, reproducing or assembling" the infringing copies. This provision has been used to authorize the seizure and forfeiture – without compensation – of entire computer systems, if they were used in connection with the reproduction of infringing copies.

## **2. Criminal Offenses and Penalties**<sup>13</sup>

In addition to civil penalties, the copyright law authorizes the imposition of criminal penalties for the willful infringement of a copyright if it is done either "for purposes of commercial advantage or private financial gain", or by the reproduction or distribution, including electronic means during any 180 day period, of copyrighted works with a value of more than \$1,000. Additional criminal offenses include fraudulent copyright notices, fraudulent removal of copyright notices, and false representation. Criminal penalties include imprisonment for up to ten years or a fine of up to \$250,000 for individuals or \$500,000 for organizations, or both.

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<sup>13</sup> 17 USC § 506, 18 USC § 2319

## II. THE DIGITAL MILLENNIUM COPYRIGHT ACT

### A. *Definitions*

1. *Analog Video Cassette Camcorder*

Means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.

2. *Analog Video Cassette Recorder*

Means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.

3. *Broadcast Station*

Means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

4. *Cable System*

Means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but cable system does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right of way; (C) a facility of a common carrier to the extent that the facility is used in the transmission of video programming directly to subscribers, unless the extent of the use is solely to provide interactive on-demand services; (D) an open video system; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

5. *Circumvent a technological measure*

To “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.

6. *Circumvent protection afforded by a technological measure*

To “circumvent protection afforded by a technological measure” means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure.

7. *Copyright Management Information*



Means information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work.

8. *DMCA*

Means the Digital Millennium Copyright Act.

9. *Effectively controls access to a work*

Means the measures that, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to that work.

10. *Effectively protects a right of a copyright owner*

Means a measure that, in the ordinary course of its operation, prevents, restricts or otherwise limits the exercise of a right of a copyright owner.

11. *Encryption Research*

Means the activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products.

12. *Encryption Technology*

Means the scrambling and descrambling of information using mathematical formulas or algorithms.

13. *Information Security*

Means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

14. *Interoperability*

Means the ability of computer programs to exchange information, and the ability of such programs mutually to use the information which has been exchanged.

15. *Professional Analog Video Cassette Recorder*

Means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

16. *Public Broadcasting Entity*

Means the corporation, any licensee or permittee of a public broadcast station, or any non-profit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.

17. *Security Testing*

Means accessing a computer, computer system, or computer network solely for the purpose of good faith testing, investigating, or correcting a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.

18. *“VHS format”, “8mm format”, “Beta format”, “automatic gain control copy control technology”, “colorstripe copy control technology”, “four-line version of the colorstripe copy control technology”, and “National Television Standards Code (“NTSC”).”*

Have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of the DMCA.

***B. Circumvention of Copyright Protection Systems***

**1. Violations pertaining to circumvention of technological measures:**

- a. No one may circumvent a technological protection measure that effectively controls access to a copyrighted work.
- b. No one may manufacture, import, disseminate, offer to the public, provide, or traffic in any technology, product, service, device, component, or part thereof that
  - (1) is “primarily designed or produced” for the purpose of circumventing a technological measure that effectively controls access to a work protected under the DMCA;
  - (2) has “only limited commercially significant” purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under the DMCA; or
  - (3) is “marketed” for use in circumventing.

**2. Classes of works may be excepted from access controls (see section II.B.1.a. above) if they are adversely affected in making non-infringing uses:**

- a. The DMCA establishes an ongoing administrative rulemaking procedure to evaluate the impact of the prohibition against circumventing access control measures. The Librarian of Congress is required to undertake such a review.
- b. In 2006, exceptions were made for six classes of works:
  - (1) Audiovisual works included in the educational library of a college or university’s film or media studies department,

- (2) Computer programs and video games distributed in formats that have become obsolete and which require the original media or hardware as a condition of access, when circumvention is accomplished for the purpose of preservation or archival reproduction of published digital works by a library or archive. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.
  - (3) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonable available in the commercial marketplace.
  - (4) Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read-aloud function or of screen readers that render the text into a specialized format.
  - (5) Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.
  - (6) Sound recordings, and audiovisual works associated with those sound recordings, distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.
- c. The next group of exceptions, if any, will be established in late 2009.

**3. Rights that are not affected:**

- a. Nothing in the DMCA is intended to affect the rights, remedies, limitations or defenses to copyright infringement, including the fair use defense.
- b. Nothing in the DMCA is intended to enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, computer or part; and
- c. Nothing in the DMCA is intended to enlarge or diminish the rights of free speech or the press for activities using consumer electronics, telecommunications or computing products.

**4. Additional Exemptions**

- a. Exemption for Educational Institutions and Libraries (if the library is open to the public, or available to researchers affiliated with the library and to other persons doing research in a specialized field):
  - (1) Educational institutions and libraries are permitted to circumvent technological protections solely for the purpose of making a good faith determination as to whether to acquire a copy of the work in question. The copy may not be retained longer than necessary to make the determination and may not be used for any other purpose. This exemption only applies when an identical copy of the work is not reasonably available in another form.
  - (2) If the requirements of this exemption are violated, the school could be liable for civil remedies under 17 USC § 1203, and/or forfeit the exemption.
  - (3) This section may only be used as a defense to section II.B.1. above, not II.B.2, nor may this exemption be used to permit an educational institution or library to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part, that circumvents a technological measure.
- b. Law Enforcement, Intelligence and Other Government Activities
  - (1) Lawfully authorized investigative, protective, information security, or intelligence activities of officers, agents, or employees of a political subdivision of a state (i.e., school), or a person acting pursuant to a contract with the school, are not prohibited.

- c. Reverse Engineering
  - (1) A person who has lawfully obtained a right to use a copy of a computer program may circumvent a technological measure that effectively controls access to that program, and/or circumvent and develop a technological means for such circumvention, if done for the sole purpose of identifying and analyzing elements of the program that are necessary to achieve interoperability with other programs, to the extent that those acts are otherwise permitted by copyright law. The School District should contact its attorney knowledgeable in Internet, computer, and information technology law or intellectual property law before attempting to utilize this exemption.
  
- d. Encryption Research
  - (1) An exception for encryption research permits circumvention of access control measures, and the development of the technological means to do so, in order to identify flaws and vulnerabilities of encryption technologies, subject to certain restrictions. The School District should contact its attorney knowledgeable in Internet, computer, and information technology law or intellectual property law before attempting to utilize this exemption.
  
- e. Protection of Minors
  - (1) An exception for the sole purpose to prevent the access of minors to material on the Internet and where it does not violate the DMCA, a court may consider the necessity of incorporating a component or part in a technology, product, service or device.
  
- f. Protection of Personally Identifiable Information
  - (1) This exception permits circumvention of a technological measure that effectively controls access to a work when that technological measure, or the work it protects, is capable of collecting or disseminating personally identifying information about the on-line activities of a natural person who seeks to gain access to the work protected.

g. Security Testing

- (1) This exception permits circumvention of access control measures, and the development of technological means for such circumvention, for the purpose of testing the security of a computer, computer system or computer network, with the authorization of its owner or operator, subject to certain restrictions.

Each of these exemptions has its own set of applicable conditions that should be reviewed by an attorney.

**C. *Copyright Management Information***

1. No one may knowingly and with the intent to induce, enable, facilitate, or conceal copyright infringement:
  - a. provide copyright management information that is false,
  - b. distribute or import for distribution copyright management information that is false.
2. No one may, without the authority of the copyright owner or the law:
  - a. intentionally remove or alter any copyright management information,
  - b. distribute or import for distribution any copyright management information knowing that the copyright management information has been removed or altered without the authority of the copyright owner or the law, or
  - c. distribute, import for distribution, or publicly perform any works, copies of any works, or any phonorecords, knowing that any copyright management information has been removed or altered without the authority of the copyright owner, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyrighted work.
3. “Copyright Management Information” includes, but is not limited to, the following (however, the term does not include any personally identifiable information about a user):
  - a. The title and other information identifying the work, including any information set forth in a copyright notice;
  - b. The name of, and other identifying information about, the author of a work;

- c. The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a copyright notice;
  - d. Except for public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer, whose performance is fixed in a work (other than an audiovisual work);
  - e. Except for public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work;
  - f. Any terms and conditions for the use of a work; and
  - g. Any identifying numbers or symbols referring to such information or links to such information (including such things as, for example, embedded pointers and hypertext links).
  - h. Other information the Register of Copyrights may prescribe by regulation (but may not include user information).
4. The DMCA recognizes special problems that certain broadcasting entities may have with transmission of copyright management information. Such entities include radio and television broadcasters, cable systems, and persons who provide programming to such broadcasters or systems. If the School District transmits programming (whether through a cable system or otherwise), it could be subject to this provision. In that event, the School District may limit its liability in certain circumstances.
- a. In the case of an analog transmission, the transmitting entity will not be held liable for violating the DMCA if it is not “technically feasible” to avoid the violation or if avoiding the violation would “create an undue financial hardship” on the transmitting entity.
  - b. In the case of a digital transmission, the DMCA contemplates voluntary digital transmission standards for the placement of copyright management information. Because different standards may apply to the placement of copyright management information in different categories of works, if the School District engages in the digital transmission of copyrighted works, it should first consult with an attorney knowledgeable in Internet, computer and information technology law or intellectual property law.
  - c. In situations where no such standards have been established, the transmitting entity will not be liable if it fails to comply with the

- (1) cause a perceptible visual or aural degradation of the digital signal
- (2) conflict with an applicable government regulation or a certain, applicable industry-wide standard for the digital transmission.

## ***D. Liabilities***

The Digital Millennium Copyright Act provides for civil and criminal penalties for those who circumvent technology protection measures and, in some cases, for those who simply make available technologies that can be used for circumvention.

### **1. Civil Remedies<sup>14</sup>**

Courts are given the power to grant a range of equitable and monetary remedies similar to those available under the Copyright Act, including statutory damages. The court has discretion to reduce or remit damages in cases of innocent violations, where the violator proves that it was not aware and had no reason to believe that its acts constituted a violation. Special protection is given to educational institutions, which are entitled to a complete remission of damages in certain circumstances.

### **2. Criminal Penalties<sup>15</sup>**

It is a criminal offense to violate the DMCA willfully and for purposes of commercial advantage or private financial gain. Penalties range up to a \$500,000 fine or up to five years imprisonment for a first offense and up to \$1,000,000 fine or up to ten years imprisonment for subsequent offense. Educational institutions are entirely exempt from criminal liability. However, individuals (including educators, staff and students) are not exempt.

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<sup>14</sup> 17 USC § 1203

<sup>15</sup> 17 USC § 1204



# **APPENDIX 1**

## **The TEACH Act**

**APPENDIX 1 - The TEACH Act**  
**THE TECHNOLOGY, EDUCATION AND COPYRIGHT**  
**HARMONIZATION ACT (TEACH ACT)**

**Limitations on Exclusive Rights: Exemption of Certain Performances and Displays**

It is not an infringement of copyright:

...

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if –

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to –

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) The transmitting body or institution –

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions –

(I) applies technological measures that reasonably prevent —

aa. retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

bb. unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

...

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made. 17 U.S.C. §110(2)

**Limitations on Exclusive Rights: Ephemeral Recordings**

...

(b) Notwithstanding the rights of copyright owners, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, or under the limitations on exclusive rights in sound recordings, to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

...

- (f) Notwithstanding the rights of copyright owners and without limiting the application of subsection b above, it is not an infringement of copyright for a governmental body or other nonprofit educational institution to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted above, of a work that is in analog form, embodying the performance or display to be used for making authorized transmissions, if –
  - (A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under the TEACH Act; and
  - (B) such copies or phonorecords are used solely for authorized transmissions.
  
- (2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under the TEACH Act, if —.
  - (A) no digital version of the work is available to the institution; or
  - (B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use under the TEACH Act. 17 U.S.C. §112

## **APPENDIX 2**

### **THE DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA)**

## APPENDIX 2

### THE DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA)

#### Title 17 Chapter 12 § 1201

#### § 1201. Circumvention Of Copyright Protection Systems

(a) Violations Regarding Circumvention of Technological Measures.

(1) ...

(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine

(i) the availability for use of copyrighted works;

(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate.

(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.

(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that --

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

(3) As used in this subsection—

(A) to “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

(b) Additional Violations.

(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

(2) As used in this subsection—

(A) to “circumvent protection afforded by a technological measure” means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

(B) a technological measure “effectively protects a right of a copyright owner under this title” if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

(c) Other Rights, Etc., Not Affected –

(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).



(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

(d) Exemption for Nonprofit Libraries, Archives, and Educational Institutions.

(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph—

(A) may not be retained longer than necessary to make such good faith determination; and

(B) may not be used for any other purpose.

(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

(B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under paragraph (1).

(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.

(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be —

(A) open to the public; or

(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

(e) Law Enforcement, Intelligence, and Other Government Activities.

This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term “information security” means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

(f) Reverse Engineering.

(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

(4) For purposes of this subsection, the term “interoperability” means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

(g) Encryption Research.

(1) Definitions.— For purposes of this subsection—

(A) the term “encryption research” means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of

knowledge in the field of encryption technology or to assist in the development of encryption products; and

(B) the term “encryption technology” means the scrambling and descrambling of information using mathematical formulas or algorithms.

(2) Permissible acts of encryption research.— Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if —

(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

(B) such act is necessary to conduct such encryption research; the person made a good faith effort to obtain authorization before the circumvention; and

(C) the person made a good faith effort to obtain authorization before the circumvention; and

(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

(3) Factors in determining exemption.— In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include —

(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

(4) Use of technological means for research activities.— Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to —

(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

(5) Report to congress.— Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on —

(A) encryption research and the development of encryption technology;

(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

(h) Exceptions Regarding Minors.— In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which —

(1) does not itself violate the provisions of this title; and

(2) has the sole purpose to prevent the access of minors to material on the Internet.

(i) Protection of Personally Identifying Information.

(1) **Circumvention permitted.**—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if —

(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

(B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;

(C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and

(D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

(2) Inapplicability to certain technological measures.— This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

(j) Security Testing.

(1) Definition.— For purposes of this subsection, the term “security testing” means accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.

(2) Permissible acts of security testing.— Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to engage in an act of security testing, if such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

(3) Factors in determining exemption.— In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include —

(A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and

(B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.

(4) Use of technological means for security testing.— Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2),[1] provided such technological means does not otherwise violate section [2] (a)(2).

(k) Certain Analog Devices and Certain Technological Measures.

(1) Certain analog devices.

(A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any —

(i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

(ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

(iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

(iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

(v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in —

(i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder “conforms to” the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

(2) Certain encoding restrictions.— No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying —

(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

(B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;

(C) from a physical medium containing one or more prerecorded audiovisual works; or

(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

- (3) Inapplicability.— This subsection shall not —
- (A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;
  - (B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or
  - (C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).
- (4) Definitions.— For purposes of this subsection:
- (A) An “analog video cassette recorder” means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.
  - (B) An “analog video cassette camcorder” means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.
  - (C) An analog video cassette recorder “conforms” to the automatic gain control copy control technology if it —
    - (i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or
    - (ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.
  - (D) The term “professional analog video cassette recorder” means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.



(E) The terms “VHS format”, “8mm format”, “Beta format”, “automatic gain control copy control technology”, “colorstripe copy control technology”, “four-line version of the colorstripe copy control technology”, and “NTSC” have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.

(5) Violations.— Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an “act of circumvention” for the purposes of section 1203 (c)(3)(A) of this chapter.

## **Title 17 Chapter 12 § 1202**

### **§ 1202. Integrity Of Copyright Management Information**

(a) False Copyright Management Information.— No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement --

- (1) provide copyright management information that is false, or
- (2) distribute or import for distribution copyright management information that is false.

(b) Removal or Alteration of Copyright Management Information.— No person shall, without the authority of the copyright owner or the law —

- (1) intentionally remove or alter any copyright management information,
- (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or
- (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

(c) Definition. — As used in this section, the term “copyright management information” means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

- (1) The title and other information identifying the work, including the information set forth on a notice of copyright.

- (2) The name of, and other identifying information about, the author of a work.
  - (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.
  - (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.
  - (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.
  - (6) Terms and conditions for use of the work.
  - (7) Identifying numbers or symbols referring to such information or links to such information.
  - (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.
- (d) Law Enforcement, Intelligence, and Other Government Activities. — This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term “information security” means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.
- (e) Limitations on Liability.—
- (1) Analog transmissions.— In the case of an analog transmission, a person who is making transmissions in its capacity as a broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if --
    - (A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and
    - (B) such person did not intend, by engaging in such activity, to induce, enable, facilitate, or conceal infringement of a right under this title.
  - (2) Digital transmissions.

(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if --

(i) the placement of such information by someone other than such person is not in accordance with such standard; and

(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title.

(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category of works, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and if --

(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

(ii) the transmission of such information by such person would conflict with --

(I) an applicable government regulation relating to transmission of information in a digital signal;

(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this chapter; or

(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

(3) Definitions.— As used in this subsection—

(A) the term “broadcast station” has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

(B) the term “cable system” has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

**Title 17 Chapter 12 § 1203**  
**§ 1203 Civil Remedies**

(a) Civil Actions.— Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

(b) Powers of the Court.— In an action brought under subsection (a), the court—

(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

(3) may award damages under subsection (c);

(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

(5) in its discretion may award reasonable attorney’s fees to the prevailing party; and

(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2).

(c) Award of Damages.—

(1) In general.— Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either—

(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

(B) statutory damages, as provided in paragraph (3).

(2) Actual damages.— The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

(3) Statutory damages.—

(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than \$200 or more than \$2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

(4) Repeated violations.— In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within 3 years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

(5) Innocent violations.—

(A) In general.— The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

(B) Nonprofit library, archives, educational institutions, or public broadcasting entities.—

(i) Definition.— In this subparagraph, the term “public broadcasting entity” has the meaning given such term under section 118 (g).

(ii) In general.— In the case of a nonprofit library, archives, educational institution, or public broadcasting entity, the court shall remit damages in any case in which the library, archives, educational institution, or public broadcasting entity sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.

**Title 17 Chapter 12 § 1204**  
**§ 1204 Criminal Offenses and Penalties**

(a) In General.— Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain --

(1) shall be fined not more than \$500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

(2) shall be fined not more than \$1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

(b) Limitation for Nonprofit Library, Archives, Educational Institution, or Public Broadcasting Entity.— Subsection (a) shall not apply to a nonprofit library, archives, educational institution, or public broadcasting entity (as defined under section 118 (g)).

(c) Statute of Limitations.— No criminal proceeding shall be brought under this section unless such proceeding is commenced within 5 years after the cause of action arose.

**Title 17 Chapter 12 § 1205**  
**§ 1205 Savings Clause**

Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.

## **APPENDIX 3**

### **WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN**





## APPENDIX 3

### WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

Definition: A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

<b>Date of Work</b>	<b>Protected From</b>	<b>Term</b>
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life +70 years <sup>16</sup> (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>17</sup> )
Published before 1923	In public domain	None
Published from 1923 – 1963	When published with notice <sup>18</sup>	28+ years could be renewed for 47 years, not extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964-1977	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life +70 years for 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life +70 years or 12-31-2047 whichever is greater.

<sup>16</sup> Term of joint works is measured by life of the longest-lived author.

<sup>17</sup> Works for hire, anonymous and pseudonymous works also have this term. 17 USC § 302(c).

<sup>18</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission notice was made within five years, such as by placing notice on unsold copies. 17 USC § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway). <http://www.unc.edu/~unclng/public-d.htm>

**APPENDIX 4**

**COPYRIGHT POLICY**

**EAST STROUDSBURG  
AREA SCHOOL  
DISTRICT**

NO: 814  
SECTION: OPERATIONS  
TITLE: COPYRIGHT POLICY  
ADOPTED: August 19, 2002  
REVISED: December 17, 2007

<b>814 COPYRIGHT POLICY</b>	
<p>1. Purpose</p> <p>U.S. Constitution, Article I, Sec. 8, Clause 8; 17 U.S.C. Sec. 101 et seq.</p>	<p>The East Stroudsburg Area School District recognizes that the Federal Constitution grants authors and creators certain rights to protect their property as a means of promoting and advancing knowledge, and that Congress enforces these rights through U.S. Copyright Law. In addition, Congress has enacted The Digital Millennium Copyright Act (DMCA) providing for limitations on infringement liability for educational institutions that are “service providers”, for preventing the circumvention of technological protection measures, for promoting distance learning through digital technologies, and for maintenance and development of digital libraries to accommodate digital technologies and evolving preservation practices.</p> <p>At the same time, the School District recognizes that Congress and the courts have provided that sometimes reproducing, publishing, displaying, distributing, or performing someone else’s work is not harmful to that person and that using the work is an important part of public discourse. Therefore, special exceptions from liability are permitted when:</p> <ol style="list-style-type: none"> <li>(1) Prior permission is granted from the Copyright Owner,</li> <li>(2) A license agreement has been executed,</li> <li>(3) The conditions for statutory limitations on exclusive rights of copyrighted works are met, such as principles related to:               <ol style="list-style-type: none"> <li>(a) Fair use</li> <li>(b) Reproductions by librarians</li> <li>(c) Performances and/or displays</li> <li>(d) The TEACH Act</li> <li>(e) Computer programs, and</li> </ol> </li> <li>(4) The conditions for exceptions from violations of the DMCA are met.</li> </ol>

<p>2. Definitions</p>	<p><b><u>Copyright protection</u></b> applies to original works of authorship fixed in a tangible medium of expression that can be perceived, reproduced, or communicated, either directly or with the aid of a machine or device. The works include the following categories: (1) literary works, (2) musical works, including any accompanying words, (3) dramatic works, including any accompanying music, (4) pantomimes and choreographic works, (5) pictorial, graphic and sculptural works, (6) motion pictures and other audiovideo works, (7) sound recordings and (8) architectural works. Copyright protection extends to most computer software, which is typically protected as a literary work. The author of a work of “visual art” may have the rights of attribution and integrity.</p> <p><b><u>Copyright does not protect</u></b> ideas, procedures, process, systems, methods of operation, concepts, principles, or discoveries, regardless of the form in which it is described, explained, illustrated, or embodied in the work.</p> <p><b><u>Rights</u></b> granted solely to the Copyright owner include the right to:</p> <ul style="list-style-type: none"> <li>(a) reproduce the copyrighted work in copies or phonorecords;</li> <li>(b) prepare derivative works based upon the copyrighted work;</li> <li>(c) distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;</li> <li>(d) in the case of a literary, musical, dramatic, and choreographic works, pantomime, and motion pictures, or other audiovisual works, to perform the copyrighted work publicly;</li> <li>(e) in the case of a literary, musical, dramatic, and choreographic work, pantomime, and pictorial, graphic, sculptural work, including the individual images of a motion picture or other audio visual work, to display the copyrighted work publicly; and</li> <li>(f) in the case sound recordings to perform the work publicly by means of digital audio transmissions.</li> </ul>
<p>3. Delegation of Responsibility</p>	<p>The Superintendent shall provide an East Stroudsburg Area School District Copyright Guidelines Handbook for employees, students, guests, visitors and independent contractors to guide them in compliance with copyright statutes, regulations, laws and this Policy. In addition, the Superintendent, or designee(s), shall provide training for employees and instructional sessions for students to assist them in complying with the copyright requirements. The Copyright Guidelines Handbook shall include, but not be limited to, legal requirements of The Copyright Act, including The TEACH ACT, and the DMCA.</p>

<p>4. Guidelines</p>	<p>It shall be the responsibility of the Superintendent or designee and Director of Instructional Technology to provide leadership for proper training and for enforcement of the Copyright Act, DMCA, this Policy and the requirements provided in the Copyright Guidelines Handbook.</p> <p>Federal laws, cases, and guidelines pertaining to copyright will govern the use of material accessed through the School District resources. Users will make a standard practice of requesting permission from the holder of the work, or their agent and complying with license agreements pursuant to the School District procedures. Employees will instruct students to respect copyrights, request permission when appropriate, and comply with license agreements and employees will respect and comply as well.</p> <p>Violations of copyright law can be a felony and the law allows a court to hold individuals personally responsible for infringing the law. The School District does not permit illegal acts pertaining to the copyright law. Therefore, any user violating the copyright law does so at their own risk and assumes all liability.</p> <p>Violations of copyright law include, but are not limited to, the making of unauthorized copies of any copyrighted material (such as commercial software, text, graphic images, audio and video recording), distributing copyrighted materials over computer networks, unauthorized downloading of music and movies, and deep-linking and framing into the content of others' web sites. Finally, employees and students may not circumvent technological protection measures, unless permitted by law.</p>
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# **APPENDIX 5**

## **COPYRIGHT ADMINISTRATIVE REGULATION**