

# **CVUSD**

## **Administrative Regulation**

AR 6162.6

### **Instruction**

#### Use of Copyrighted Materials

\*\*\*Note: Pursuant to 17 USC 101-122, district staff must seek permission from the copyright owner to reproduce and distribute a copyrighted work, except when the material is in the public domain or the use meets the criteria for an exception specified in 17 USC 107-122. Exceptions applicable to schools include "fair use" (17 USC 107); library reproduction and archiving (17 USC 108); first sale (17 USC 109); and classroom performance, display, and distance education (17 USC 110).\*\*\*

Prior to reproducing, distributing, displaying, posting, performing, or otherwise using a copyrighted material for an instructional purpose or in the course of other district business, district staff shall determine whether it is necessary to request permission of the copyright holder. Unless the staff member is reasonably certain that the material is in the public domain or the intended use meets the criteria for an exception specified in 17 USC 107-122 and this administrative regulation, he/she shall either obtain permission from the copyright holder or avoid use of the material. In addition, permission of the copyright holder shall be requested whenever district staff intend to publicly disseminate a copyrighted work, such as by posting on the district or school web site or using another method of communications accessible to the public.

(cf. 1113 - District and School Web Sites)  
(cf. 1114 - District-Sponsored Social Media)  
(cf. 4040 - Employee Use of Technology)  
(cf. 4119.21/4219.21/4319.21 - Professional Standards)  
(cf. 4132/4232/4332 - Publication or Creation of Materials)  
(cf. 5131.9 - Academic Honesty)  
(cf. 6141 - Curriculum Development and Evaluation)  
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)  
(cf. 6161.11 - Supplementary Instructional Materials)  
(cf. 6163.1 - Library Media Centers)

Any reproduction or other use of a copyrighted work shall include the copyright notice.

District staff shall not reproduce and distribute copyrighted works of any type in any of the following circumstances:

1. When the copyrighted work is a "consumable" work such as a workbook, standardized test, answer sheet, or similar material
2. To substitute for the purchase of the work

3. To create, replace, or substitute for anthologies or collective works

#### Request for Permission to Use Copyrighted Material

As necessary, district staff desiring to use a copyrighted material shall identify and contact the copyright holder to request permission to use the material. The request shall include the following information:

1. Title, author(s), editor(s) or publisher, producer(s) or distributor
2. Edition, copyright, and/or production year
3. Exact amount of material to be used,
4. Nature of the use, such as the course in which it will be used, the grade level of the students, the number of students, and the frequency of use
5. How the material will be reproduced and distributed

If the copyright holder requires a fee to grant permission, district staff shall seek approval from the Superintendent or designee prior to incurring the cost.

#### Criteria for Fair Use

In considering whether a copyrighted work may be used without the copyright holder's permission on the grounds that the intended use is "fair use" pursuant to 17 USC 107, including reproduction in copies, phonorecords, or any other reproductive form for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, district staff shall consider all of the following factors: (17 USC 107)

\*\*\*Note: Although nonprofit educational purposes are granted consideration in determining fair use pursuant to 17 USC 107 (item #1 below), the U.S. Supreme Court in *Campbell v. Acuff-Rose Music, Inc.*, emphasized that a nonprofit educational purpose alone does not automatically ensure fair use.\*\*\*

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

Any determination of fair use shall weigh together all the factors specified in items #1-4 above in

addition to any applicable guidelines presented in this administrative regulation for specific types of copyrighted works.

### Guidelines for Copying Text

Staff may reproduce text from a copyrighted work from a printed resource, the Internet, or other source, without permission from the copyright holder, under the following conditions:

1. A single copy of a chapter of a book, article from a periodical or newspaper, short story, short essay, short poem, chart, graph, diagram, drawing, cartoon, or picture may be made by or for a teacher for his/her scholarly research or use in teaching or preparation to teach a class.
2. Multiple copies, not to exceed one copy per student in a course, may be made by or for a teacher for classroom use or discussion, provided that:
  - a. The amount to be copied does not exceed:
    - (1) 250 words for a complete poem or excerpt from a poem
    - (2) 2,500 words for a complete article, story, or essay
    - (3) 1,000 words or 10 percent of the whole (with a minimum of 500 words), whichever is less, for an excerpt from a larger prose work
    - (4) One illustration (e.g., chart, graph, diagram, cartoon, or picture) per book or periodical issue
  - b. The copying is for only one course in the school.
  - c. With the exception of newspapers and other news periodicals, not more than one work is copied from the same author per term, not more than three works are copied from the same collective work or periodical volume per term, and there are no more than nine instances of multiple copying per course per term.
  - d. A delay to request permission from the copyright holder would preclude the most effective instructional use of the material.

### Guidelines for Reproducing Sheet and Recorded Music

\*\*\*Note: The following section reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: *Reproduction of Copyrighted Works by Educators and Librarians*.\*\*\*

District staff may reproduce sheet music and recorded music without permission from the copyright holder under the following conditions:

1. Emergency copies may be made when purchased copies needed for an imminent

performance are not available, provided that replacement copies shall be purchased in due course.

2. Single or multiple copies of excerpts of works may be made for academic purposes other than performances, provided that the excerpt does not constitute an entire performable unit (e.g., a section, movement, or aria), no more than 10 percent of the total work is used, and the number of copies made does not exceed one per student.

3. Printed copies that have been purchased may be edited or simplified provided that the character of the work is not distorted and lyrics are not added or altered.

4. A single copy of a recorded performance by students may be made for evaluation or rehearsal purposes.

5. A single copy of recordings of copyrighted music owned by the district or individual teacher may be made for the purpose of constructing exercises or examinations.

#### Guidelines for Performing or Displaying Copyrighted Works

\*\*\*Note: Pursuant to 17 USC 101, the holder of a copyright for a motion picture or other audiovisual work retains exclusive rights for public performances of the work (i.e., exhibitions outside of one's home to a normal circle of family and social acquaintances), except that 17 USC 110 provides an exception for performance or display of the work in face-to-face instruction. In such circumstances, it is not necessary to conduct an analysis of fair use nor obtain permission of the copyright holder. Pursuant to 17 USC 110, this exception only applies if the district (1) institutes a policy regarding copyright; (2) provides informational materials on federal copyright laws to students, teachers, and other relevant staff; and (3) provides notice to students that materials used in connection with the course may be subject to copyright protection.\*\*\*

In the course of face-to-face instruction in a classroom or similar place devoted to instruction, teachers or students may recite, render, play, dance, act, or show a copyrighted work either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, show its images in any sequence or to make the sounds accompanying it audible, provided that: (17 USC 101, 110)

1. The performance or display is given by means of a lawfully obtained copy of the work.
2. The performance or display is made by, at the direction of, or under the actual supervision of a teacher as an integral part of a class session.
3. The performance or display is directly related and of material assistance to the teaching content of the transmission.
4. The transmission is limited to students enrolled in the course or to Governing Board members or employees as part of their official duties or employment.

5. If the work is to be digitally transmitted, the district has applied technological protections that reasonably prevent retention of the work in accessible form for longer than the class session and the unauthorized further dissemination of the work.

Any use of a motion picture or other audiovisual work outside the curriculum, such as for entertainment, a school or class reward, or a fundraiser, shall require permission from the copyright holder or a special viewing license.

#### Guidelines for Recording Broadcast Programming

\*\*\*Note: The following section reflects nonbinding guidelines included in the U.S. Copyright Office's Circular 21: Reproduction of Copyrighted Works by Educators and Librarians for fair use of off-air recording of free television programming. Although the guidelines do not address radio broadcasts, it may be assumed that similar guidelines would apply. Legal counsel should be consulted as necessary.\*\*\*

Teachers may make recordings of television programs for use in a classroom for educational purposes under the following conditions:

1. Only programs provided to the public free of charge may be recorded and shown. Any use of programming from paid television services shall require permission of the copyright holder.
2. The recording may be shown only during the first 10 consecutive school days after it is made. It may be used once by an individual teacher in the course of relevant teaching activities and may be repeated once only when instructional reinforcement is necessary.
3. A limited number of copies may be reproduced from each recording to meet the legitimate needs of the teacher. Each copy shall be subject to all the provisions governing the original recording.
4. The recording may be retained for 45 calendar days after it is made and then shall be erased or destroyed. However, after the first 10 consecutive school days, the recording may only be used for purposes of determining whether or not to include the broadcast program in the teaching curriculum. If the teacher decides to keep the program for use in the curriculum, he/she shall request permission from the copyright owner.
5. Off-air recordings need not be used in their entirety, but the content of recorded programs may not be altered.

#### Guidelines for Copying Computer Programs or Software

District staff shall observe all licensing agreements between vendors and the district, including monitoring the number of users permitted by an agreement. Unless the applicable licensing agreement authorizes multiple users of a single computer program or software, the district shall not make multiple copies.

Copies of district-owned software may be made under either of the following conditions: (17 USC 117)

1. The copy is needed as an essential step in using the computer program with a particular machine.
2. The copy is used for archival or "backup" purposes only. This copy may be held only as a file copy and must be destroyed in the event that continued possession of the program ceases to be rightful, unless the copyright owner authorizes its sale, lease, or transfer as part of the sale, lease, or transfer of the original program.

CVUSD Global Adoption: August 19, 2008 (5/14)