

DUPLICATION OF COPYRIGHTED MATERIAL

Utilizing the creative works of artists, filmmakers, photographers, video and multimedia producers is an integral part of instruction for many teachers in the WSWHE BOCES area. The MultiMedia library maintains an extensive collection of audio-visual works to support this educational use. However, the size of the library's collection will always be dwarfed by the number of works that are available for use in the classroom.

Many faculty and their students are now turning to the World Wide Web to download materials for use in the classroom, on course web pages, Power Point presentations or multimedia projects. Although the copying of photographs, illustrations, sounds, music, video or text from existing web sites is relatively easy, caution is advised since both copyrighted works and public domain works are found on the Internet. The fact that the MultiMedia library has the technology to copy these works does not mean they can be legally reproduced and reused without permission or royalty payment.

The following information is being provided to illustrate when certain media may be duplicated without the permission of the owner of a copyrighted work in accordance with copyright law.

Multimedia Fair Use

The Fair Use Guidelines for Educational Multimedia currently provides the best guidance regarding what copyright owners and publishers consider fair use in the digital environment in educational, scholarly and library settings. It also provides direction on the educational use of copyrighted materials such as motion media, music, illustrations and photographs.

Certain conditions must be met for fair use to apply to the duplication of copyrighted media:

- The copyrighted media to be duplicated must be lawfully acquired through purchase, gift or license agreement (i.e. no pirated copies or Blockbuster rentals).
- The intended use of the duplicated material by the educator must be for curriculum-based instruction and for either face-to-face instruction, directed self-study by students, or remote instruction (as defined in Section 3.2.3).
- The duplicated material may be used only for a period of up to two years after the first instructional use of the material.
- The amount of the copyrighted material to be duplicated meets the following portion limitations for the type of media being duplicated:

Motion Media

"Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work" (see Section 4.2.1) NOTE: Fair use of copyrighted motion media materials also permits duplication, including same format duplication (VHS to VHS) as well as cross format duplication (film to VHS, phonograph record to tape cassette etc.), if the copyrighted material is "out-of-print," attempts to reach the copyright holder have proved unsuccessful, and a copy is needed to protect the integrity of the original.

Text Material

"Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material" (see Section 4.2.2)

Music

"Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work" (see Section 4.2.3)

Copyrighted music included in school projects, end of year ceremonies or graduations is not allowed. Please use the copyright free music provided from MultiMedia services (Soundzabound copyright free music).

Photographs or Illustrations

"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 a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced " (see Section 4.2.4)

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" (see Section 4.2.5)

School Plays

Schools who wish to have copies of school plays duplicated must sign a disclaimer showing that they have the appropriate rights for recording and duplication. These rights must be obtained from the current copyright holder.

Off-Air Recording of Television Programs

Programs that are shown on television have been broadcast from a national or local provider, the public broadcasting system (PBS), or provided by a cable operator. Whether such programs may be duplicated varies somewhat depending on the program provider. Fair use guidelines have been developed specifically for off-air recording.

Off-Air Recording of Broadcast Television Programs

A broadcast TV program may be recorded for instructional purposes without the permission of the program's copyright owner with the following limitations:

- The recording may be retained for a period of forty-five calendar days after which it must be erased.
- A limited number of copies may be made to meet legitimate needs, but these copies must be erased when the original videotape is erased.

- The recorded program may be used in class (or shown to several different classes) once during the first ten school days of the forty-five day period, and a second time during the same ten school day period if the instruction needs to be reinforced.
- Only a portion of the program may be used if warranted by the instructional situation.
- The content of the program may not be altered in any way.

Off-Air Recording of PBS Programs

In some cases, producers of PBS programs permit the use of their programs for longer than the 10 days. However, the allowed usage does vary from program to program. Faculty should contact their local PBS station about the specific program of interest for information about exceeding the guidelines.

Off-Air Recording of Cable TV Programs

Faculty may not record cable programming from providers such as HBO, The Disney Channel, ShowTime, C-Span, or ESPN. Permission must be obtained for educational purposes.