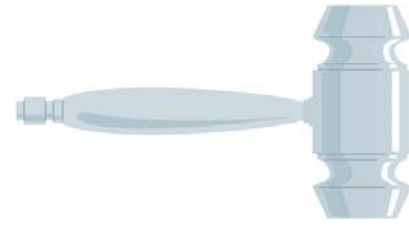


Legal Corner



By Michael I. Levin, Esq., PAESSP General Counsel

Basic Copyright—What a Principal Needs to Know



Copyright is a property right in or to an original work of art or literature. That means that the author or creator has the same types of rights with respect to the art or literature that anyone would have with respect to other forms of property. The copyright owner has the right to reproduce, distribute, adapt, perform or display the copyrighted work. The copyright

owner can sell or transfer these rights to others, or give permission to others to perform or display the copyrighted work for particular purposes. The owner of the copyright has these rights with respect to all forms of reproduction, including photocopies, slides and recordings on any media, such as videotapes and CDs. The federal Copyright Law provides the owner of copyrighted material exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) 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, pantomimes and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic and choreographic works, pantomimes and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C.A. § 106.

To qualify for copyright protection, the work must be original, creative to a minimal degree and in a fixed or tangible form of expression. Although the copyright protection applies to the particular, distinctive words an author uses to present ideas or facts, the copyright does not apply to the underlying concepts or facts; those items cannot be owned. There is no need under current copyright law for the copyright symbol, “©”, to be on the publication in order for the copyright protection to apply.

Copyright covers a broad array of works, including the following eight general categories of works:

1. **Literary works.** This includes fiction and nonfiction. It includes books, periodicals, manuscripts of all types, manuals and such things as records, audiotapes and computer disks.
2. **Musical works.** This includes both the music and the words.
3. **Dramatic works.** This includes music, plays and dramatic readings.
4. **Pantomimed and choreographed works.**
5. **Pictorial, graphics and sculptural works.** This includes two-dimensional and three-dimensional works of fine, graphic and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, architectural plans, diagrams and models.
6. **Motion pictures and audiovisual works.** This includes slides and tapes, multimedia presentations, filmstrips, films and videos.

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7. **Sound recordings.** This includes records, tapes, cassettes and computer disks or digital compositions.
8. **Architectural works.** This includes the design of a building as embodied in any tangible medium of expression, including a building, architectural plans and drawings.

Obviously, schools are packed full with copyrighted materials and copyrighted materials are used in schools almost every minute of the school day. The trick is to ensure that the rights of copyright owners are not violated. I suggest that this challenge is growing as current technology makes it increasingly easy to locate, copy, print and distribute copyrighted material. The line between permissible use and prohibited use of copyrighted material may seem less clear in this environment, but the rules persist. The principal, as the frontline supervisor in each building, must be vigilant to ensure that teachers and students are not violating copyright. The penalties for copyright infringement can be harsh. A court can award up to \$150,000 for each separate act of willful infringement. Willful infringement means that the perpetrator knew that he or she was infringing and did it anyway. The sanctions are less drastic if the infringement is not willful and there is a provision in the law that allows the court to refuse to award damages if the infringing individual can establish the "good faith fair use defense." 17 U.S.C.A. § 504(c)(2).

In addition to federal law generally prohibiting schools and educators from violating the copyright of others, most school boards have adopted policies prohibiting copyright infringement. I recommend that principals read the district's policy manual to become familiar with all of the rules applicable to the school district, including the rules pertaining to copyright.

One of the most important concepts permitting limited use of copyrighted material by educators is the "fair use" doctrine. That doctrine is set forth in section 107 of the Copyright Act as follows:

[T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a com-

mercial nature or is for nonprofit educational purposes;

- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

17 U.S.C.A. § 107.

Although the foregoing rules are easily stated, they are somewhat subjective. In an effort to bring some objectivity to these rules, many have attempted to develop "guidelines" to help educators and educational entities comply with the law. For example, the United States Copyright Office has published the following guidelines for written material:

Guidelines

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

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

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

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- A. The copying meets the tests of brevity and spontaneity as defined below and,
- B. Meets the cumulative effect test as defined below and,
- C. Each copy includes a notice of copyright.

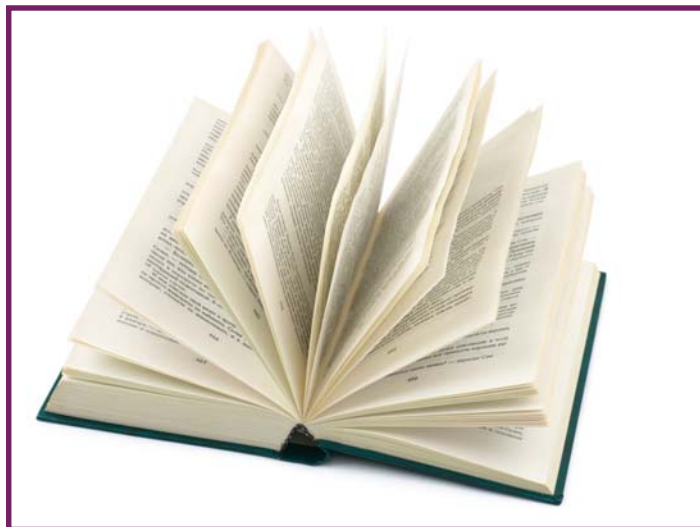
Definitions

Brevity

- i. **Poetry: (a)** A complete poem if less than 250 words and if printed on not more than two pages or, **(b)** from a longer poem, an excerpt of not more than 250 words.
- ii. **Prose: (a)** Either a complete article, story or essay of less than 2,500 words or. **(b)** an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- iii. **Illustration:** One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.



- iv. **“Special” works:** Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof, may be reproduced.

Spontaneity

- i. The copying is at the instance and inspiration of the individual teacher, and
- ii. 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.

Cumulative Effect

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II

Notwithstanding any of the previous, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - a. substitute for the purchase of books, publishers’ reprints or periodicals;
 - b. be directed by higher authority;

- c. be repeated with respect to the same item by the same teacher from term to term.

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

United States Copyright Office, Circular 21, Reproduction of Copyrighted Works by Educators and Librarians at 6-7 (rev. Nov. 2009) (internal references omitted).¹

I recommend that principals periodically remind the teachers in their buildings of the rules surrounding copyright and fair use and ensure that they are complying with the rules. If a principal is aware of any violation of the applicable rules, the principal ought to take action to remedy the situation and ensure that the violation not be repeated.

Endnote

¹ The complete publication may be accessed at <http://www.copyright.gov/circs/circ21.pdf>.