

Policy

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COPYRIGHT POLICY

The Hortonville Area School District shall comply with copyright law as stipulated in the United States Copyright Act and the congressionally endorsed guidelines for Fair Use. The Hortonville Area School District respects the rights of both authors and educators in its educational programs. The District has prepared this Copyright Policy to educate the District community about the rights and obligations under the law, and to help the members of our District community achieve educational objectives while complying with the law.

Copyright law is designed to protect the financial interests of those who create original work. Financial rewards provide the incentive for the creation of more original works and complying with copyright laws benefits society by ensuring a steady supply of creative works. Although the use of copyrighted works in a school setting is not intended to divert income from the creators of those works, schools must still function within specified "fair use" guidelines. By upholding the fair use guidelines through the development of this policy, the Hortonville Area School District is demonstrating its responsibility for acting within the limits of the copyright law.

Implementation:

- A. A printed copy of this Policy should be distributed annually to every Hortonville Area School District teacher and staff personnel.
- B. What is protected by copyright?
Copyright protects almost any human expression with some spark of creativity, regardless of quality or importance. Simply put, just about anything that is written down, drawn or recorded is protected by copyright, including works of fiction or non-fiction, computer programs, paintings, films, musical compositions, and so on. Anything protected by copyright is known as a "work of authorship."
- C. Copyright does not protect the ideas or facts contained in work; ideas and facts belong to the public. Copyright protects only the particular expression of facts or ideas. Thus, you do not violate a copyright by extracting facts from a copyrighted work and using those facts in your own work.
- D. What rights does the author have?
 1. Copyright law grants to the author five exclusive rights: the right to reproduce; to adapt; to publish; to publicly perform; and to publicly display. These rights are exclusive, which means that if you want to do one of these things with a copyrighted work, you need the author's permission.
 2. The author's exclusive rights are subject to some exceptions, however. These exceptions are particularly important for educators, and they are discussed in detail in section 3 of this Policy.

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E. Does copyright have to be registered?

No. Copyright protection is automatic, and it applies to every work as soon as it completed. Copyright registration, however, is reasonably easy, and it has advantages if you believe that your work might be infringed.

F. Do copyrighted works have to have a copyright notice?

1. Not under current law. It is a good idea, however, to include copyright notice on any work you publish. Proper copyright notice consists of three elements: (1) the word "copyright" or the © symbol; (2) the year of first publication; and (3) the name of the author or copyright owner.
2. Before 1989, however, a work published without copyright notice generally lost copyright protection and entered the public domain. But there are exceptions, and you should check with the HASD copyright adviser before deciding that a published work has lost its copyright protection.

G. How long does copyright last?

1. For works created in 1978 or after by an individual, copyright lasts for the life of the author plus 70 years. If the "author" is an institution because the work was prepared as a work for hire, copyright lasts 95 years from publication, or 125 years from creation, whichever is shorter.
2. For works created before 1978, copyright lasts 95 years from date of the original copyright, but only if the copyright was properly attained and renewed. You should check with the HASD copyright adviser for assistance in determining whether a pre-1978 work is protected by copyright.
3. Works published before 1923, however, are now in the public domain. Under prior copyright law, the copyright in any work published before 1923 would have expired before the new, longer copyright terms took effect.

H. Fair Use and Educational Exemptions

Although the Copyright Act grants authors the right to control and exploit their works, those rights are subject to certain limitations and exceptions. Three of those limitations are particularly important to educators because, under certain limited conditions, they permit educators to make use of copyrighted works without obtaining permission.

1. Fair Use

- a. Any person may make "fair use" of copyrighted work without obtaining permission. What constitutes fair use, however, is sometimes hard to determine. Whether a particular use is a fair use is defined on a case-by-case basis after consideration of the following four factors:

1. The purpose and character of the use;
2. The nature of the work;
3. The amount and substantiality of the portion used in relation to the work as a whole; and
4. The effect on the market for the copyrighted work.

Although no single factor is decisive, the fourth factor is often considered to be most important if the other factors are inconclusive.

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- b. In connection with the enactment of the Copyright Act of 1976, educators and publishers established guidelines for classroom copying of books and periodicals in non-profit educational institutions. HASD endorses these guidelines as an appropriate measure of what constitutes fair use of books and periodicals. These guidelines permit making multiple copies of portions of copyrighted works if the copying meets three requirements: (1) the copied portion of the material must be brief; (2) the need to make copy must arise close to the time the material is needed, so that seeking permission is impractical; and (3) the same material must not be copied repeatedly in different terms.
 - c. Please note, however, that these guidelines do not permit the inclusion of book chapters or journal articles in “course packs” without the permission of the copyright owner. The use of book chapters and journal articles in course packs constitutes copyright infringement, as a federal court held in *Basic Books, Inc. v. Kinko’s Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991).
 - d. Attached to this policy as Appendix A is a reference chart, Copyright and Fair Use Guidelines for Teachers that addresses questions that commonly arise concerning the fair use of copyrighted material in education.
2. Face-to-face teaching exemption
 - a. With a limited exception for educational use, an author has the exclusive right to authorize the public performance or display of a work of art. It is improper to stage a performance for the general public of a copyrighted play or read a book to the public without the author’s permission. However, there is a limited exception for educational purposes and permission for a classroom performance is not needed. Section 110(1) of the Copyright Act permits “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction.” If you meet the requirements of section 110(1), the performance or display does not need to meet the requirements of fair use.
 - b. The section 110(1) exemption permits the instructor to play a video rental in class if the following requirements are met:
 1. The performance of the video rental is part of the teaching activity of the class;
 2. The class is part of the regular curriculum;
 3. The entire audience is involved in the teaching activity;
 4. The entire audience and the teacher are in the same room or same general area; and
 5. The performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium or workshop.
 - c. This exemption applies only to performance or display of lawfully made copies. If the copy was not legally made, it cannot be performed or displayed in the classroom.
3. Distance education exemption
 - a. Under section 110(2) of the Copyright Act, many performances or displays that would be permitted in the classroom would also be permitted to be transmitted by closed-circuit television or by the Internet to students in remote locations. This allows for proper

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- presentation of copyrighted materials via KSCADE, the District's Distance Education Network.
- b. Special limitations and restrictions apply to such transmissions, however. Accordingly, if you will be providing course materials that will be accessed by students from remote locations, please see the HASD copyright adviser to ensure that your materials comply with the Copyright Act.
- I. Use of copyrighted works in connection with HASD courses.
 1. Course packs
 - a. The inclusion of a copyrighted work, or a portion of a copyrighted work, in a "course pack" of materials distributed to students is not a fair use, and does not meet any of the educational exemptions provided in the Copyright Act. Accordingly, a course pack may contain only:
 1. original material written by the instructor who prepares the course pack;
 2. material in the public domain; or
 3. materials used by permission of the author or copyright owner.
 - b. It is the responsibility of the instructor to seek and secure permission to use the copyrighted materials included in a course pack.
 - c. Every course pack that includes copyrighted works must contain a notice to students that the course pack contains copyrighted works. For further information on using course packs contact the HASD Copyright Advisor.
 2. Copies distributed in class
 - a. Fair use permits instructors to make and distribute in class copies of brief articles, essays or stories (or excerpts of longer materials) if the decision to use such material is made on the spur of the moment. For example, if an instructor discovers a news magazine article related to a topic covered in the class, the instructor could have that article copied and distribute it at the next class meeting.
 - b. Such spontaneous copying does not justify the use of the same work in more than one semester, and there are limits on how many instances of such "spontaneous" copying are permitted. For further information, see Appendix A, Copyright and Fair Use Guidelines for Teachers.
 3. On-line distribution of copyrighted material
 - a. Web sites accessible by the Public
HASD instructors may find it useful to create course-related web sites to communicate with students, and instructors may use HASD information systems to do so. The web site can contain material created by the instructor or material in the public domain without violating any copyright.
 - b. However, the posting of material on a publicly accessible web site is the equivalent of printing and publishing the material. Accordingly, posting of copyrighted material on a web site accessible by the Public generally requires the permission of the copyright owner, even if the web site's purpose is solely educational.

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- c. Under some circumstances, the posting of limited portions of a copyrighted work may constitute a fair use of that material. Fair use is explained in section 3.1 of this policy. If the use of the material is a fair use, prior permission is not required. If the web site is solely educational, this factor will count in favor of fair use, but the other fair use factors must also be considered. As a general rule, if the use of the material on a web site would undermine the commercial market for the material, the use is not a fair use.
 - d. It will not be a fair use to use a web site as means of distributing a collection of copyrighted works as a substitute for a course pack. However, in seeking permission to include copyrighted material in a course pack, the instructor may also seek permission to distribute the course pack online, either through a publicly accessible web site, or through an access-restricted online course.
 - e. Thus, through a publicly accessible web site, the instructor can distribute:
 - 1. materials created by the instructor;
 - 2. materials in the public domain;
 - 3. copyrighted materials used with permission of the copyright owner; and
 - 4. limited portions of copyrighted material, without permission, if the use is a fair use.
 - f. Generally, the fact that one web site provides links to another web site does not constitute copyright infringement and does not require the permission of the other web site owner. "Deep linking," meaning, linking to a page deep within a web site so that web users can avoid introductory pages that contain terms of use or advertising, may violate the "linked" web site owner's rights. You should seek permission before linking if the link would be a deep link or linking to the site is restricted by terms of use on the site to which you intend to link.
4. Access-restricted online courses.
- a. Using an access-restricted online course, such as a Blackboard course, instructors can distribute more material than can be distributed on a publicly accessible web site. Under the TEACH Act, a 2002 amendment to the Copyright Act, the distance education exemption generally permits instructors to distribute on-line the same materials that the instructor could present in face-to-face teaching. The face-to-face teaching exemption is covered in section 3.2 of this policy. Thus, through an access-restricted online course, the instructor can distribute any material that could be distributed on a publicly accessible web site, plus materials permitted under the TEACH Act.
 - b. Distribution under the TEACH Act is subject to restrictions. The following categories of materials may be distributed under the authority of the TEACH Act:
 - 1. entire performances of non-dramatic literary and musical works;
 - 2. reasonable and limited parts of dramatic literary, musical or audiovisual works; and
 - 3. displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching.
 - c. The following materials are specifically excluded from distribution under the TEACH Act:
 - 1. materials specifically marketed for classroom use for digital distance education;

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2. copies the instructor knows, or should know, have been made illegally; and
3. textbooks, course packs, electronic reserves and similar materials typically purchased individually by students for independent review outside the classroom.
- d. If the material to be transmitted is in analog form, a digital copy of the material may be made if:
 1. the amount copied is limited to the amount needed for the transmission; and
 2. no digital copy is available without technological protections that prevent its use.
- e. In using materials under the TEACH Act, the instructor must also ensure that:
 1. access to the materials is restricted to students registered in the course;
 2. access to the materials is terminated at the end of the course;
 3. the materials are used at the direction of the instructor;
 4. the materials used are directly related and of material assistance to the course content;
 5. the materials include notice that the materials are protected by copyright.
- f. For further information on the on-line distribution of materials contact the HASD Instructional Technology Coordinator.
5. Access protection and archival storage of on-line course material.
 - a. To meet its obligations under the TEACH Act, HASD institutes the following policies related to the distribution of materials in access-restricted online courses:
 1. HASD will provide software and secure servers through which instructors can restrict access to on-line course materials to students enrolled in the course;
 2. The course instructor is responsible for removing student user names from the course at the conclusion of the course;
 3. HASD will not archive access-restricted course material after the conclusion of the course;
 4. HASD will ensure that its information systems do not interfere with the technological controls used by the owners of materials to be distributed under the TEACH Act;
 5. HASD will use technology that reasonably limits the students' ability to retain or further distribute materials transmitted under authority of the TEACH Act.
6. Use and reproduction of copyrighted works in a school library
 - a. A school library may make, and place on reserve, one physical copy of any work in its collection, and it will do so at the request of an instructor. Such copying is permitted under section 108 of the Copyright Act, and it need not be justified as a fair use.
 - b. A school library may make, and place on reserve, multiple physical copies of a work if it meets the fair use guidelines (see the chart Copyright and Fair Use Guidelines for Teachers in Appendix A), and access is restricted to students enrolled in the course. Access to such works may also be provided through electronic reserves, again provided that access is restricted to students enrolled in the course.

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- c. If the use of a particular work is does not meet fair use guidelines, permission of the copyright owner is needed to make multiple physical copies or to place the work on electronic reserve.
 - d. Section 108 of the Copyright Act also permits the library to make a small number of copies to preserve works that are deteriorating or to provide access to works that can no longer be purchased through conventional channels.
7. Use of copyrighted works for extracurricular activities
 - a. The educational exemptions for teaching activities, whether face-to-face or on-line, do not apply to extra-curricular activities. Accordingly, the use of copyrighted materials in extra-curricular activities generally requires the permission of the copyright owner unless it is justified as a fair use.
 - b. The use of brief excerpts of copyrighted works to illustrate a speech or lecture would likely be a fair use and would not require permission.
 - c. The public performance of a complete work, such as the playing of a videotape of a motion picture, would not be a fair use and would require permission. A performance is “public” if it is “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and its social acquaintances are gathered.” Videos or DVDs rented from ordinary video rental stores are licensed for home use only, not for public performance. Thus, if a motion picture screening is open to the public or to the members of an official student organization, the motion picture should be licensed from an organization that licenses performances for student groups. The HASD copyright adviser can assist you in contacting such an organization.
8. Infringing materials on HASD information systems
 - a. HASD will investigate allegations that the posting of material on any HASD information system constitutes copyright infringement, provided that the following information is provided to the HASD Copyright Agent, as required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, 17 U.S.C. § 512:
 1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 2. Identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
 3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
 4. Information reasonably sufficient to permit us to contact the complaining party;
 5. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

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6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- J. The HASD Copyright Agent under the Digital Millennium Copyright Act is the District Administrator.
 1. HASD will take appropriate measures, consistent with the HASD policies on use of HASD information systems and the Digital Millennium Copyright Act, in response allegations that infringing material has been posted on or transmitted with HASD information systems. These measures may include the removal of infringing material, and in the case of repeated acts of infringement, the termination of the user's HASD information system account.

United States Copyright Act – Title 17 of the United States Code