

# Copyright Matters

## 10 Things Every K-12 School District Should Think About



With a copyright infringement jury **verdict** of \$7.8 million awarded to an education publisher against Houston ISD, other school districts, curriculum developers and their attorneys need to be more knowledgeable about U.S. copyright law. With that in mind, here are 10 things every K-12 school district should know from our partner, Copyright Clearance Center (CCC):

- 1. What is copyright?** Copyright is the exclusive right of a creator to make copies and derivatives of their original creative works, such as books, photographs, maps, etc.
- 2. Why does copyright law exist?** Copyright began in England in the 1600's and is enshrined in the U.S. Constitution. Copyright laws exist to ensure robust creative output, and to bolster culture and democracy, by allowing authors and other creators to be compensated for use and reuse of their works for a limited time.
- 3. Is copyright infringement the same as plagiarism?** No, but they are related conceptually. Copyright infringement is a legal concept where one copies a substantial amount of the protected expression of another without consent. Plagiarism is a moral concept where someone uses a substantial amount of someone else's thoughts and ideas without credit. Thus, copying large amounts of content without crediting the source may be both infringement and plagiarism. Copying the concepts but not the expression without credit is more likely plagiarism, and copying large amounts with credit but without permission is infringement.
- 4. What are the penalties for copyright infringement?** Infringement can lead to injunctions, destruction of infringing content, actual damages and statutory damages of up to \$150,000 per infringed work, depending on the circumstances.
- 5. What is the "public domain"?** Works in the public domain can be freely used by anyone without restriction. They include works from 1926 and older, works of the U.S. Federal Government, and works from after 1926 that failed to comply with certain formalities under older copyright laws. Note that recent translations or adaptations of older works may be protected by copyright.
- 6. What is "fair use"?** Fair use is an "affirmative defense" by which an otherwise infringing activity is excused. Use in teaching can often be (but is not always) fair use. When determining fair use, courts look primarily to "market harm." For example, the spontaneous making of a few copies of news articles on a relevant topic for a class may be "fair use" as it is non-systematic and is unlikely to harm sales of the work. Note that "fair use" is "fact dependent" with each use requiring its own fair use evaluation. However, it is safe to say the more systematic or the "larger" the use, the less likely it is to be fair. Further, "fair use" is not the same for all types of works, even though the language of the fair use statute is the same. As courts look to "market harm" in evaluating whether a particular use is a fair use, materials prepared for student use (classroom and home) by a publisher, and then copied without permission by a teacher also for student use, will ordinarily receive greater protection than those not originally prepared for student use.
- 7. Is "fair use" transferable to my copy center?** No. Under longstanding precedent, even if it might be fair use for a student or teacher to make multiple copies in a particular circumstance, professional copy centers—such as Office Depot or Staples—require permission.

8. **Am I responsible for my employees?** Yes. As in the Houston case, the district is responsible for its teachers.
9. **Can I use material I find on the open web?** It depends. Materials on the web are protected by copyright in the same manner as if they were printed. Where materials (for example, OER materials) are posted by the copyright holder with a copyright disclaimer or some type of license, use can be made consistent with that license. In the absence of a license, all material should be presumed protected.
10. **If I create curriculum (lesson plans, instructional videos, assessments, and other classroom resources) who is the copyright holder, me or the district?**  
The answer to whether the materials are owned by the teacher or district is surprisingly complicated. The

first thing to check is whether your district has a policy in place that provides an answer, and to encourage the district to create one if not. Otherwise, under the Copyright Act, a number of factors need to be considered. For example, if materials are created by an employee-teacher as part of a district supervised effort during work hours, the district is likely to own the copyright. On the other hand, copyright in materials created on the teacher's initiative in the teacher's spare time, especially if the materials are outside the narrow confines of the district curriculum, is likely to be owned by the teacher. And any "rule" set up by the Copyright Act can be effectively changed by agreement or by a published district policy.

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## Using Authentic Third-Party Content

ELA and social studies standards typically require the use of authentic third-party content, such as complex texts including articles, essays, poems, text excerpts, primary source documents, etc. Frequently, this content remains protected under copyright, so copying beyond "fair use" requires permission from the copyright holder.

While there is no formula to ensure that a predetermined percentage or amount of a work—or specific number of words, lines, pages, copies—may be used without permission, when a district adopts a curriculum for thousands of students at scale, use of that material is far less likely to be considered fair use.

### Learn More

Find out how we can help you implement affordable, high-quality resources for your unique K-12 classrooms—all while managing copyright compliance.

Visit <http://www.xanedu.com/k-12> to learn more.

For more information about copyright, please visit <https://www.copyright.com/learn/about-copyright/>

## About XanEdu

A new type of custom publishing partner has emerged to support educators seeking better curriculum solutions. XanEdu's CustomBook Solutions make education personalized and affordable by giving districts and states control to create materials around their courses and students, rather than asking students to adapt to a standard, off-the-shelf resource. Working with more than 1,200 education institutions nationally, XanEdu helps learners at all levels of education access high-quality, student-centered, innovative learning resources.

## About Copyright Clearance Center



Copyright Clearance Center (CCC) builds unique solutions that connect content and rights in contextually relevant ways through software and professional services. CCC helps people navigate vast amounts of data to discover actionable insights, enabling them to innovate and make informed decisions. CCC, with its subsidiary RightsDirect, collaborates with customers to advance how data and information is integrated, accessed, and shared while setting the standard for effective copyright solutions that accelerate knowledge and power innovation. CCC is headquartered in Danvers, Mass. with offices across North America, Europe and Asia. To learn more about CCC, visit [www.copyright.com](http://www.copyright.com).