

Copyrighted Material and Intellectual Property

Statement of Values

The purpose of copyright law is to promote creativity, innovation and the spread of knowledge. The law does this by balancing the rights of both copyright holders and users. Bismarck Public Schools recognizes and respects intellectual property rights and is committed to fulfilling our legal obligations with respect to our use of copyright-protected works and asserting our rights to the special exemptions allowed for teachers and libraries in copyright law.

District Obligations

It is the intention of Bismarck Public Schools to adhere to the provisions of current copyright laws. Employees and students must adhere to all provisions of Title 17 of the United States Code and other relative federal legislation related to the duplication, retention, and use of copyrighted materials.

Specifically:

- Unlawful copies of copyrighted materials may not be produced or distributed on district-owned equipment, including, but not limited to photocopiers, scanners, computers, and video and sound recording devices.
- The legal and insurance protection of the district will not be extended to employees who intentionally and unlawfully copy and use copyrighted materials.
- Employees who make and/or use copyrighted materials in their jobs are expected to be familiar with published provisions regarding fair use and public display, and are further expected to be able to provide their supervisor, upon request, the justification under sections 107 or 110 of United States Code 17 for materials that have been used or copied.
- Employees who use copyrighted materials that do not fall within fair use or public display guidelines will be able to substantiate that the materials meet one of the following tests:
 1. The individual or the district has purchased the materials from an authorized vendor and a record of the purchase exists.
 2. The materials are copies covered by a licensing agreement between the copyright owner and the district or the individual employee.
 3. The materials are being previewed or demonstrated by the user to reach a decision about future purchase or licensing and a valid agreement exists that allows for such use.

Fair Use Principles

Under the fair use doctrine, copyrighted materials may be reproduced without authorization for the purposes of criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research following these general guidelines:

PURPOSE AND CHARACTER OF THE USE. The use must be for such purposes of teaching or scholarship and must be nonprofit, not commercial.

NATURE OF THE COPYRIGHTED WORK. Staff may make *single* copies of: a chapter of a book for such use as instruction, preparation for teaching or research; an article from a periodical or newspaper; a short story, essay or poem and a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

AMOUNT AND SUBSTANTIALITY OF THE PORTION USED. Copying the whole of a work cannot be considered fair use: copying a small portion may be considered fair use if appropriate guidelines are followed. The amount and substantiality of the portion used must be reasonable.

EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK. If resulting economic loss to the copyright holder can be shown, making even a single copy of certain materials may be an infringement; and making multiple copies presents the danger of greater penalties, thus, the potential market value of the work should not be affected.

Because “courts evaluate fair use claims on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry...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.” Employees can use a fair use checklist or online fair use evaluator to determine if the content they wish to use constitutes fair use. Library media specialists can assist with the fair use evaluation if desired.

Creative Commons

There are a number of digital resources that offer videos, music, pictures, and other media under a Creative Commons license, which generally requires only proper attribution for use. Please consult with your library media and technology staff for assistance in identifying these ever-evolving resources.

Multimedia Content Guidelines

- Streaming of music and movies from personal accounts (e.g. Amazon, Hulu, Netflix) is generally not permitted in the classroom according to the license agreement you signed when creating your account. Read your license agreement carefully prior to using this content in the educational setting.
- The same rules governing fair use apply to multimedia content.
- Creative Commons music, pictures, and other media are highly encouraged for multimedia projects.

Compliance

Each school office should maintain electronic or paper copies of federal Fair Use Guidelines and federal Fair Use Standards for off-air taping of copyrighted audio and audiovisual works. Legal counsel shall review any proposed usage beyond the guidelines.

The Director of Media Services will issue memorandums regarding this policy and federal Fair Use Guidelines to employees as needed, and post notices of copyright law and this policy in appropriate locations. The BPS School District will employ the state's internet filter in effort to prevent illegal downloading and file sharing, and the principals will notify students of this policy and BPS's responsible user expectations through student handbooks.

Intellectual Property

Any copyrightable work produced by a district employee within the scope of his/her duties is considered "work made for hire." The District owns all copyrightable rights to these items. Employees have no right to use such work outside the scope of their district duties without the Board's permission. "Work made for hire" must remain with the District upon separation.

The Board authorizes the Superintendent to sell "work made for hire" products to other school systems, organizations, or commercial firms in accordance with the district's sale of school property policy.

Violations

Administration shall investigate all complaints of alleged copyright violations.

Students and employees who willfully disregard the district's copyright position are in violation of board policy and shall be subject to disciplinary consequences in accordance with applicable policies and law. In addition, employees who willfully disregard this policy do so at their own risk and assume all liability. The District may also deem employees who willfully violate copyright laws to be acting outside the scope of employment.

Complementary Documents

- ACDA, Acceptable Use
- IAD, Real Property Disposal Procedure