



# **©** COPYR I G H T

QUESTIONS, ANSWERS  
& THE LAW

# INTRODUCTION

Reproduction of copyrighted material, without prior permission of the copyright owner, particularly in an educational setting, is an issue of concern for the academic community. Unfortunately, the impropriety of much unauthorized copying is all too often overlooked by users in an educational setting.

Although copying all or part of a work without obtaining permission may appear to be an easy and convenient solution to an immediate problem, such unauthorized copying can frequently violate the rights of the author or publisher of the copyrighted work, and be directly contrary to the academic mission to teach respect for ideas and for the intellectual property which expresses those ideas.

Fitchburg State University encourages its faculty, staff, and students to respect the intellectual property rights of others and to abide by applicable intellectual property laws, including copyright law. Without understanding the copyright law, including elements such as the doctrine of “Fair Use” and its application and limitations in the educational setting, faculty members, copy centers, university stores, universities and colleges themselves, and others, will be at risk for engaging in illegal photocopying. Fitchburg State University neither condones nor authorizes the making of copies in violation of U.S. Copyright Law (Title 17, U.S. Code).

This booklet is intended to aid you in conforming to the requirements of U.S. copyright law by providing easy-to-understand guidelines. These guidelines, in question and answer format, present a current overview of relevant sections of the amended Copyright Act of 1976, including:

- The requirements for protection of copyrighted works from unrestricted copying;
- The doctrine of “Fair Use” and its limitations;
- The reasons for university stores and copy centers to be indemnified in the event of liability for copyright infringement, and the effects of such indemnities; and
- Procedures on how to obtain permission to reproduce copyrighted material.

It is the goal of this booklet to increase understanding of the rules governing copyrighted works and to familiarize the reader with procedures at Fitchburg State University for securing permission to photocopy protected works.

# QUESTIONS AND ANSWERS CONCERNING COPYRIGHT COMPLIANCE

## 1. **What is a copyright?**

The copyright law grants owners of copyrights (authors and other creators and publishers) the sole right to do or allow others to do each of the following acts with regard to their copyrighted work:

- A. to reproduce all or part of the work;
- B. to distribute copies;
- C. to prepare new (derivative) versions based on the original work;
- D. to perform and display the work publicly and for the visual arts;
- E. to claim authorship;
- F. to prevent false claims of authorship;
- G. to prevent use of their name when their work has been modified in a manner prejudicial to their reputation, and;
- H. to prevent the intentional modification of their work which would be prejudicial to their reputation.

Copyright protection is available for “original works of authorship fixed in a tangible medium of expression.” (See question 4.)

Copyright protection covers both published and unpublished works.

The fact that a previously published work is out of print does not affect its copyright.

## 2. **How is a copyright obtained?**

The Copyright Act of 1976 provides that copyright begins at the moment the work is created. Registration with the Copyright Office is not required in order for a work to be protected under U.S. copyright law. (Registration requirements were eased effective March 1, 1989.) But registration does provide certain advantages, including the ability to qualify for an award of attorney’s fees and substantial statutory damages.

## 3. **How is a copyright registered?**

Generally you must send the following three items in the same envelope or package to the Register of Copyrights, Copyright Office, Library of Congress, Washington D.C. 20559:

- A. A properly completed application form;
- B. A nonrefundable filing fee for each application;
- C. A nonreturnable deposit of the work being registered. The deposit requirements vary in particular situations.

## 4. **What types of works can claim copyright protection?**

As noted above, copyright exists in “original works of authorship” which are “fixed in a tangible medium of expression.” Among the types of works which are subject to copyright protection are literary, dramatic, musical, choreographic and pictorial works, graphic works, pantomimes, sound recordings, sculptures, motion pictures and audiovisual works. These categories include fact works (including dictionaries and directories), video cassettes and computer programs and databases.

Copyright protection does not include ideas, procedures, processes, systems, concepts, principles or discoveries, although these may be protectible under patent or trade secret laws.

However, literary or other forms of expression of these ideas (and the like) are covered by copyright.

## 5. **How long does a copyright last?**

If a work was created on or after January 1, 1978, the duration of copyright, for most works, is the life of the author plus 50 years.

For works created before January 1, 1978, duration is for 28 years plus a 47 year renewal and should thus for practical purposes be considered to be 75 years.

Where the creator of a work is an employee or in certain cases where the work has been specially commissioned as an instructional text, as a test, as answer material for a test, or for other purposes, copyright protection lasts for 75 years from the date of first publication or 100 years from its date of creation, whichever date expires first.

## 6. **Do I have to pay a fee for permission to reproduce copyrighted material?**

It depends. Individual copyright holders set their own permissions and pricing policies. Different fees are charged by different publishers depending on the nature of the work and the type of use which the requester intends to make of the work (e.g. classroom use vs. presentation at a professional conference). Some copyright holders grant permission without a fee.

### **7. How do I find out who owns the copyright for a particular work?**

Most works contain a notice of copyright. You should consult both the page containing the copyright notice as well as any acknowledgment pages in the work. If you have a photocopy or other reproduction that does not contain a notice of copyright or acknowledgments, you should consult an original copy of the work to determine if the original has the information you need.

The information contained in such copyright notice may not always reflect accurately the identity of the current copyright owner of the material in question. The best method for determining copyright ownership is by contacting the publisher of the work that you wish to copy.

Since March 1, 1989, notice of copyright is optional. So the absence of a copyright notice does not mean the material can be freely copied.

### **8. What are the penalties for copyright infringement?**

Civil and criminal penalties may be imposed for copyright infringement. Civil remedies include an award of monetary damages (including substantial statutory damages, which in cases of willfulness after March 1, 1989, may total up to \$100,000 per work infringed, or actual damages, including the infringer's profits), an award of attorney's fees, injunctive relief against future infringement and the impounding and destruction of infringing copies and the plates or other articles used in making such copies.

Generally, the maximum criminal penalty is a \$25,000 fine and one year of imprisonment; however, for extensive multiple infringements of sound recordings, motion pictures or other audio visual works a criminal penalty of up to \$250,000 fine and five years of imprisonment is possible.

### **9. What is "Fair Use"? How does it affect copyrighted material?**

The doctrine of "Fair Use" (section 107 of the U.S. copyright law) in limited situations permits the use of a copyrighted work, including reproducing portions of that work, without the copyright owner's permission. Section 107 of the Copyright Act establishes four basic factors to be examined in determining whether a use constitutes a "Fair Use" under the copyright law. These factors are:

- A. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- B. The nature of the copyrighted work;
- C. The amount and substantiality of the portion of the work used in relation to the copyrighted work as a whole; and
- D. The effect of the use in question upon the potential market for or value of the copyrighted work.

No one factor is determinative of a person's right to use a copyrighted work without permission. Educational use alone is not sufficient to qualify as "Fair Use."

In the legislative history of the 1976 Copyright Act, Congress endorsed certain guidelines relating to classroom copying for educational use. These guidelines are generally considered to establish minimum permissible conduct under the Fair Use doctrine for unauthorized copying. Although some limited copying which does not fall within these guidelines (and which is not expressly prohibited under Prohibitions A through F described below) may still qualify as permissible conduct under the copyright law.

### **One thing is certain ... when in doubt, request permission.**

The guidelines for making copies without permission for use in an academic setting contain the following prohibitions:

- A. Unauthorized copies may not be used to create, replace or substitute for anthologies, compilations or collective works, whether or not such unauthorized copies are collected and bound together or are provided separately.
- B. Unauthorized copying may not be made of "consumable" works, including workbooks, exercises, standardized tests, test booklets and answer sheets, and the like.
- C. Unauthorized copying may not substitute for the purchase of books, publisher's reprints or periodicals.
- D. Unauthorized copying may not be directed by higher authority, such as a dean or chairman of the department.
- E. The same teacher cannot copy the same item without permission from term to term.
- F. No charge shall be made to the student beyond the actual cost of the photocopying.

The guidelines further indicate that multiple copying not to exceed one copy per student in the class is allowed in the following situations (unless falling within one of the above prohibitions):

- A. When an individual teacher is "inspired" to use a work and the inspiration, decision to use it and 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. Note: This "spontaneity" requirement prohibits using copies made for one semester in a subsequent semester; and
- B. If the following limitations with regard to the amount of copying of a work are applied:

If a complete article, story or essay is copied, and the work copied is less than approximately 2,500 words. (There are particular rules for certain “special” works which consist of less than 2,500 words. See attached text of guidelines.

If a prose work is excerpted and copied, and the excerpt copied is no longer than approximately 1,000 words or 10% of the work, whichever is shorter.

If a chart, graph, diagram, drawing, cartoon or picture is copied, and not more than one such illustration is copied per book or per periodical issue.

If a short poem is copied, and the poem is less than 250 words and printed on not more than two pages; or if an excerpt from a longer poem is copied, and the excerpt is not longer than 250 words; and

C. The copying is for only one course in the school in which the copies are made; and

D. No more than one short poem, article, story or essay or two excerpts are copied from the same author. In addition, no more than three works or excerpts may be copied from the same collective work or periodical volume during one class term and no more than nine instances of such multiple copying may occur for one course during one class term. (The guidelines limitations of Paragraph D do not apply to current news periodicals, newspapers, and current news sections of other periodicals); and

E. The original copyright notice must appear on all copies of the work.

For a full text of the guidelines, see Appendix A.

## 10. What is “the Kinko’s case”?

“The Kinko’s case” refers to a lawsuit filed against Kinko’s Graphics Corporation in 1989 (*Basic Books, Inc., et. al. vs. Kinko’s Graphics Corporation*) by eight book publishers for copyright infringement. The case involves materials which were copied by Kinko’s for classroom use of Columbia University, New York University, and the New School for Social Research. The Court held that Kinko’s practice of photocopying, without authorization, multiple page excerpts (including chapters of books and articles from periodicals) from copyrighted works to create anthologies and of selling those anthologies to students for profit violated the publisher’s copyrights. The copyrighted works Kinko’s infringed included hardback and paperback editions of works, both in and out of print works, and trade, professional and text books. The copied materials ranged in length from 14 to 110 pages and from 5% to 24% of the works.

The Court found Kinko’s guilty of copyright infringement and, in addition to enjoining Kinko’s from photocopying works to create anthologies without permission of the copyright owners, awarded the plaintiffs damages of \$510,000 and court costs and attorney’s fees of \$1,365,000.

## 11. Why did the publishers bring this suit?

Publishers typically sell both complete books and the permission to copy smaller portions of books. As copyright owners, publishers have the right to refuse permission. Kinko’s practice of copying without permission infringed publishers’ rights to sell permission to copy or, at their discretion, to object to copying, and deprived both publishers and authors of royalty income.

## 12. Will faculty members who assign customized course anthologies, or the universities at which they teach, be liable for copyright infringement?

They may be liable. In the Kinko’s suit, the publishers sued a commercial copying chain that had profited from selling publisher’s copyrighted works without obtaining permission. The copy shop in this case had solicited faculty business and, according to the trial record, falsely assured the faculty that copyright compliance was being handled.

In 1983, a number of publishers coordinated a suit against New York University and nine professors for creating similar course packs. The action was settled with the adoption of certain procedures by NYU. Since that time, faculty and school administrations have generally been sensitive to the copyright law and have widely followed the Classroom Guidelines (see Appendix A) which the court confirmed in the Kinko’s case to be relevant.

## 13. Why does the law require people to obtain permission and pay fees for photocopying?

Copyright exists to foster and induce the creation of all forms of intellectual property, including books. The copyright law does so by providing fair returns to creators and copyright owners. To the extent that any organization unlawfully makes and sells (portions of) copyrighted works without permission, authors and publishers are deprived of revenues in the very market for which they have written and published. This could severely reduce the incentive to write and publish books and, in the long run, harm education because investments of time and money in new books will not be made if such books are copied by others without compensation to the copyright owners.

**14. Am I infringing someone's copyright if I make multiple copies and either distribute those copies for free or require their return after use?**

You may be infringing. You do not have to sell the copies or permanently dispose of them in order to infringe the copyright owner's rights.

**15. If I assign a journal article for students to read, can they, on their own, go to the library and copy it for their own use?**

Reproduction in libraries and archives is governed by Section 108 of Title 17, United States Code. It allows "the isolated and unrelated reproduction or distribution of a single copy" on separate occasions not in excess of fair use. The congressional reports clearly state that the section "does not authorize the related or concerted reproduction of multiple copies" regardless of whether the copying occurs on a single occasion or over a period of time and of whether the copies are intended for use by one individual or by the individual members of a group (such as a class of students).

The full text of section 108 is contained in Appendix B.

**16. Can I make a copy of an entire work or a substantial part of a work for my personal use without getting permission from the copyright holder?**

There is no automatic exemption for making even one unauthorized personal copy of a copyrighted work. Nevertheless, the "Fair Use" guidelines discussed above (see question 9) provide that a teacher may make a single copy, for scholarly research or for use in teaching or preparing to teach a class, of the following works provided that the prohibitions of question 9 are not violated:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

**17. Can I legally copy a work I bought without infringing the copyright?**

The purchaser of a work owns only that particular copy of the work. The purchaser does not own any rights in the copyright covering the contents of the purchased copy. Consequently, a purchaser cannot copy the purchased work, in whole or in part, without the copyright owner's permission unless such copying constitutes "Fair Use."

**18. What should I do if I want to use materials that contain a photograph or an illustration with a copyright owner different than that of the book itself?**

You should note that many times photographs or illustrations are covered by copyrights owned by a different party than the copyright owner of the material in which they are published. The author or publisher of that material has received permission from the photographer or illustrator to include it in the work and may or may not have the right to grant permission to others to reproduce the photograph or illustration. Consequently, you may need to make a separate request for permission to copy the photograph or illustration.

The photograph or illustration owner's name can usually be obtained from the credit line beneath the material or on the page containing the acknowledgment or notice of copyright. If the information is not available, the book publisher's copyright permissions department can usually supply this information and can also tell you whether separate permission is required.

**19. Other than under the Fair Use doctrine discussed in question 9, can I ever copy material freely without worrying about infringing someone's copyright?**

Works in the public domain may be freely copied; however collections and edited versions of works in the public domain may be protected by copyright. Works which are in the public domain include works that have never been the subject of copyright protection and works whose term of copyright protection has expired.

Absence of notice of copyright cannot be relied upon to indicate that a work is in the public domain. In fact, for works created on or after March 1, 1989, notice is not required.

Similarly, the fact that the author is deceased or the book is out of print does not mean that the work may be copied.

When in doubt about the status of a work, it is best to contact the publisher's copyright permission department to determine whether the work is still under copyright or in the public domain.

Certain works created by the U.S. government, including documents prepared by an officer or employee of the federal government as part of that person's official duties, may also be freely copied. The right to copy U.S. government-created works without permission, however, does not extend to documents published by others with the support of U.S. government funds, grants or contracts, or to portions of government documents which contain copyrighted material from other non-governmental sources, or fully to publishers' edited, annotated or compiled versions of such documents.

**20. Can I copy a work and sell it to students through the campus bookstore or copy shop if the material doesn't have a copyright notice?**

As noted above, the absence of a copyright notice cannot be relied upon to indicate that the work may be freely copied without infringing anyone's copyright.

**21. What if I request permission and I don't get a response?**

If you don't receive a response to your request for permission, you cannot assume that you have been granted the necessary permission.

**22. What can I do if a text has been ordered for a class but is late arriving at the bookstore?**

You may be able to obtain permission from the copyright owner to photocopy a portion of the text until the book arrives. Each publisher has different procedures regarding such matters. You should contact the publisher to determine what procedures the publisher follows.

**23. If there is some question regarding whether permission to copy the work has been secured by someone asking a university store or copy center to sell material or to have materials duplicated for sale, can a university store or copy center be protected from suit?**

Not if the store or copy center makes, sells or distributes the copy. If a store or copy center makes, distributes or sells copyrighted materials that have been illegally or improperly copied, it can be subject to suit, found liable for copyright infringement and subjected to all penalties and remedies for the infringement.

An indemnification agreement, signed by the provider of materials to be sold through the store or copy center, does not absolve the store or copy center of liability or shield it from payment of such penalties and remedies. Such an agreement, however, gives the store or copy center the right to recover damages or losses arising from a suit for copyright infringement from the signer of the indemnification agreement.

# OBTAINING PERMISSION TO COPY COPYRIGHTED MATERIALS

## **COPYRIGHT CLEARANCE CENTER (CCC)**

The CCC is a not-for-profit organization that facilitates access to information in observance of the copyright law. CCC works for publishers, authors and photocopy users to streamline and simplify the permissions process for authorized use of copyright materials.

Copyright Clearance Center, Inc.  
222 Rosewood Drive  
Danvers, MA 01923  
508/750-8400

## **PERMISSION REQUEST LETTER**

Contact the publisher directly and provide the following bibliographic information:

Book/Journal Title  
Chapter/Article Title  
Publisher  
International Standard Book or Serial Number  
Author  
Publication Year  
Volume/Edition  
Page Numbers

See sample copy of letter.

## **Sample Letter**

September 21, 1994

Permissions Department  
Watson-Guptill Publications  
1515 Broadway  
New York City, New York 10036

Dear Sir or Madam:

I would like permission to duplicate the following for use in my class next semester:

Title: Production for the Graphic Designer

Copyright: Watson-Guptill Publications, 1974

Author: James Craig

Material to be duplicated: Pages 138, 139, and 141 (photocopies enclosed),  
all of Chapter Six: Imposition

Distribution: University classroom (Typography and Design I, II); Material will  
be distributed gratis to students

Type of reprint: photocopy

The diagrams included on the pages listed above will be used as supplementary materials  
for a class on book design. I have enclosed a self-addressed stamped envelope for your  
convenience. Please let me know what your fee will be for this permission.

Sincerely yours,

Karla M. Whitney  
Industrial Technology Department



# APPENDIX A: FAIR USE

Fair Use is an exclusion to the copyright laws which permits making copies of copyrighted materials without the prior permission of the copyright owner when the use of these copies meets certain criteria. Fair Use, previously a judicial doctrine, was made a part of the United States Copyright Law (Title 17 United States Code Section 107) effective January 1, 1978.

## Title 17 United States Code

### Section 107 Limitations on exclusive rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A [which grant to the copyright owner certain exclusive rights including reproduction and the ability to prepare derivative works], the Fair Use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section (section 106), 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 commercial 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 copy righted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The four factors or criteria outlined in section 107, must all be evaluated to determine if the use qualifies for Fair Use. Instructional or research use at Fitchburg State only addresses the first criterion. The analysis and factual determinations necessary to determine if the use qualifies as Fair Use can be quite complex. Guidelines to aid in making this determination exist for books and periodicals, music, and off-air recording of broadcast programming.

Following is the text of an agreement reached March 19, 1976 between representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc. This agreement is part of the Congressional legislative record of section 107 and outlines Fair Use guidelines for books and periodicals.

The purpose of the guidelines is to state the minimum and not the maximum standards for educational Fair Use under section 107. They are not intended to limit the types of copying permitted by judicial decisions within the factors/criteria outlined in section 107. There may be instances in which copying which does not fall within the guidelines may nonetheless be permitted under the criteria of Fair Use.

## AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR PROFIT EDUCATIONAL INSTITUTIONS WITH RESPECT TO BOOKS AND PERIODICALS

### 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:

1. A chapter from a book;
2. An article from a periodical or newspaper;
3. A short story, a short essay, or a short poem, whether or not from a Collective work;
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

### 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:

1. The copying meets the tests of brevity and spontaneity defined below; and,
2. Meets the cumulative effects test as defined as defined below; and,
3. Each copy includes a notice of copyright.

# DEFINITIONS

## Brevity

1. **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.
2. **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 “1” and “2” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

3. **Illustration:** One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
4. **“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 “1” above 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% of the words found in the text thereof may be reproduced.

## Spontaneity

1. The copying is at the instance and inspiration of the individual teacher; and
2. 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

1. The copying of the material is for only one course in the school in which the copies are made.
2. 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.
3. There shall not be more than nine instances of such multiple copying for one course during one class term.  
(The limitations stated in “2” and “3” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

## Prohibitions

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

1. 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 are reproduced and used separately.
2. There shall be no copying of or from works intended to be “consumable” in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets, and answer sheets and like consumable material.
3. Copying shall not:
  - a. substitute for the purchase of books, publisher’s 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.

# GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational Fair Use under section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of Fair Use under judicial decision and which are stated in section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

## Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.\*\*
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

## Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

\*Corrected from *Congressional Record*.

\*\***Editor's Note:** As reprinted in the House Report, subsection A.2 of the Music Guidelines had consisted of two separate paragraphs, one dealing with multiple copies and a second dealing with single copies. In his introductory remarks during the house debates on S.22, the Chairman of the House Judiciary Subcommittee, Mr. Kastenmeier, announced that "the report, as printed, does not reflect a subsequent change in the joint guidelines which was described in a subsequent letter to me from a representative of (the signatory organizations)," and provided the revised text of subsection A.2 (122 CONG. REC. H 10875, Sept. 22, 1976). The text reprinted here is the revised text.

# APPENDIX B: REPRODUCTION BY LIBRARIES AND ARCHIVES

## SECTION 108 OF TITLE 17, UNITED STATES CODE

Limitations on exclusive rights: Reproduction by libraries and archives:

- A. Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if:
  1. the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
  2. the collections of the library or archives are (1) open to the public, or (2) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
  3. the reproduction or distribution of the work includes a notice of copyright.
- B. The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.
- C. The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.
- D. The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work if:
  1. the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
  2. the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- E. The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if:
  1. the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
  2. the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- F. Nothing in this section:
  1. shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises:  
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- H. The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic, or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections b and c, or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections d and e.
- I. Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.