

Copyright Resource Material



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Brigham Young University
2005*

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COPYRIGHT RESOURCE MATERIAL

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I. PREFACE

This Copyright Resource Material is designed to assist you in understanding copyright law and the issues associated with the use of copyrighted materials in both traditional and digital formats.

Changing developments in information technology have affected how we access information in fundamental ways. Increasing amounts of information are available in digital form through networks which connect computers around the globe. The Internet provides access to a vast array of information, from favorite family recipes and jokes to scholarly treatises and music—all available through a digital click. Yet this enhanced access also raises difficult fundamental issues concerning intellectual property (copyright) ownership rights, because the technology that makes access so easy also greatly aids both legal and illegal copying.

It is important to understand how copyright laws and rules are applied to the constantly changing environment of information technology. While the “subject matter” of copyright law can be complex and detailed, we hope these resource materials will enhance your understanding of and respect for the copyright ownership rights of others.

II. INTRODUCTION TO COPYRIGHT

1. Copyright Basics

A basic understanding of copyright law is needed before appropriate decisions regarding any proposed use of copyrighted material can be made. When thinking about the possible use of copyrighted material, keep in mind the perspectives of both the owner and the user of the material. When using another person's material, ask yourself: "What kind of respect and adherence to copyright law would I want others to follow if I were the copyright owner of the material they are about to use?" This approach demonstrates the principles of respect and trust; respect for the rights of others and trust in those who have an opportunity to use your works.

Be aware that mere ownership of a book, manuscript, painting, or any other copy of a copyrighted work does not automatically grant you copyright ownership. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights.

A. What Is Copyright?

Copyright is protection provided by law (title 17, U.S. Code) to the authors/creators of "original works of authorship," expressed in any tangible medium of expression. This protection is available for original works from the moment they are created and expressed in a tangible medium, and it applies whether they are published, unpublished, or registered with the U.S. Copyright Office.

Copyright protection is available for an author/creator if three requirements are met:

- (1) Fixation—the work exists in a medium from which the author's expression can be read, seen, or heard, either directly or by the aid of a machine
- (2) Originality—the work owes its origin and independent creation to an author
- (3) Minimal creativity—the work is the product of at least a minimal level of creativity

B. What Works Are Protected?

Most original works expressed in a tangible medium are protected by copyright. The U.S. Copyright law places copyrightable works in the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

You should view these categories broadly. For example, computer programs and most compilations may be categorized and registered as literary works; maps and architectural plans may be categorized and registered as pictorial, graphic, and sculptural works.

C. Rights of the Copyright Owner

Section 106 of the U.S. copyright law gives the owner of a copyright the *exclusive right* to do and to authorize others to do the following:

- to reproduce the work
- to prepare derivative works based upon the work
- to distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- to perform the work publicly
- to display the copyrighted work publicly
- in the case of sound recordings, to perform the work publicly by means of digital audio transmission
- in the case of a “work of visual art” the author has certain rights of attribution and integrity

The rights of the copyright owner are, in some instances, limited in scope as several sections of the U.S. Copyright Law have established limitations on these rights. However, unless one or more of the limitations (exemptions) apply, you must obtain permission from the copyright owner before using copyrighted works in any of the listed ways.

Remember, the copyright owner is the person or entity who owns the exclusive rights mentioned above. The copyright owner could be the author, the publisher, or another person or entity having legal ownership of one or more of the exclusive rights described above. It is both dishonest and illegal for a person to violate any rights of the copyright owner.

D. Unprotected Materials

Copyright protection does not extend to the following therefore, copyright permission is not required for you to use them:

- Works for which the copyright has expired.
- Works federal government employees produced within the scope of their employment.
- Works clearly and explicitly donated to the public domain.
- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or spontaneous speeches or performances that have not been written or recorded).
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting entirely of information that is common property and contains no original authorship (for example, standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

E. Duration of Copyright Protection

Copyright protection does not last forever. When protection expires, the work enters the public domain. The laws governing how long copyright lasts have been revised several times; therefore, the determination of copyright status can be rather complex. The following chart summarizes copyright duration.

Copyright Term and the Public Domain in the United States 1 January 2005		
UNPUBLISHED WORKS		
Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2005ⁱ
Unpublished Works	Life of the author + 70 years	Works from authors who died before 1935
Unpublished anonymous and pseudonymous works, and words made for hire (corporate authorship)	120 years from date of creation	Works created before 1885.
Unpublished works created before 1978 that were published before 1 January 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 31 December 2002	Life of the author + 70 years	Works of the authors who died before 1935.
Unpublished works when the death date of the author is not known ⁱⁱ	120 years from date of creation ⁱⁱⁱ	Works created before 1885. ⁴
WORKS PUBLISHED IN THE U.S.		
Date of Publication⁵	Conditions⁶	Copyright Term²
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate authorship, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
1923 through 1963	Published with notice but copyright was not renewed	In the public domain
1923 through 1963	Published with notice and the copyright was renewed	95 years after publication date ²

WORKS PUBLISHED IN THE U.S., continued		
1964 through 1977	Published with notice	95 years after publication date ²
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
WORKS PUBLISHED OUTSIDE THE US⁹		
Date of Publication	Conditions	Copyright Term in the United States
Before 1 July 1909	None	In the public domain
Works Published Abroad Before 1978 in Compliance with US Formalities⁸		
1 July 1909 through 1922	Published in compliance with US formalities	In the public domain
1923 through 1977	Published with notice, and still in copyright in its home country as of 1 January 1996	95 years after publication date ⁹
Works Published Abroad Before 1978 Without Compliance with US Formalities¹⁰		
1 July 1909 through 1922	Published in a language other than English and without subsequent republication with a copyright notice	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain
1923 through 1977	In the public domain in its home country as of 1 January 1996	In the public domain
1923 through 1977	Published in a language other than English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be 95 years after publication date ¹¹
1923 through 1977	Published in English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	95 years after publication date ⁹
Works Published Abroad After 1 January 1978		
After 1 January 1978	Copyright in the work in its home country has not expired by 1 January 1996	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
Special Cases		
After 1 July 1909	Created by a resident of Afghanistan, Bhutan, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries ¹²	Not protected by US copyright law because they are not party to international copyright agreements
After 1 July 1909	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government ¹³	Not protected by US copyright law

Footnotes

¹ This chart was first published in Peter B. Hirtle, “Recent Changes To The Copyright Law: Copyright Term Extension,” *Archival Outlook*, January/February 1999. This version is current as of 1 January 2005.. The most recent version is found at http://www.lcopyright.cornell.edu/training /Hirtle_Public_Domain.htm.

² All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 5 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018)

³ Unpublished works when the death date of the author is not known may still be copyrighted, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See 17 U.S.C. 302 (e).

⁴ Presumption as to the author’s death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

⁵ “Publication” was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.”

⁶ Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person’s official duties receive no copyright protection in the US. For much of the twentieth century, certain formalities had to be followed to secure copyright protection. For example, some books had to be printed in the United States to receive copyright protection, and failure to deposit copies of works with the Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after twenty eight years were the most common conditions, and are specified in the chart.

⁷ A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, “Study No. 31: Renewal of Copyright” (1960), reprinted in Library of Congress Copyright Office. *Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on Judiciary, United States Senate, Eighty-six Congress, first [-second- session.* (Washington: U.S. Govt. Print. Off, 1961), p 220. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, “Determining Copyright Status for Preservation and Access: Defining Reasonable Effort,” *Library Resources and Technical Services* 41:4 (October, 1997): 323-334. See also Library of Congress Copyright Office, [How to investigate the copyright status of a work. Circular 22.](#) [Washington, D.C.: Library of Congress, Copyright Office, 2004]. The Online Books Page FAQ, especially “[How Can I Tell Whether a Book Can Go Online?](#)” and “[How Can I Tell Whether a Copyright Was Renewed?](#)”, is also very helpful.

⁸ The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More.* (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the US within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the US are treated as if they are American publications.

⁹ Foreign works published after 1923 are likely to be still under copyright in the US because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work had to be a non-US citizen or resident, the work could not have been published in the US within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, [Highlights Copyright Amendments Contained in the Uruguay Round Agreements Act \(URAA\). Circular 38b.](#) [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹⁰ US formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the US.

¹¹ The differing dates is a product of the question of controversial *Twins Books vs. Walt Disney Co.* decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under URAA (see note 9). The court in *Twin Books*, however, concluded “publication without a copyright notice in a foreign country did not put the work in the public domain in the United States.” According to the court, these foreign publications were in effect “unpublished” in the US, and hence have the same copyright term as unpublished works. The decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignore the *Twin Books* decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.

¹² See Library of Congress Copyright Office, [International Copyright Relations of the United States. Circular 38a.](#) [Washington , D.C.:Library of Congress, Copyright Office, 2004].

¹³ See 63 Fed. Reg. 19,287 (1998), Library of Congress Copyright Office, [Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act: List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office.](#)

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F. Copyright Notices

Even though a copyright notice is not required, there are benefits in placing a notice on all copyrighted works. If a copyright notice is included, it should contain the following elements:

- ©, the word copyright, or the abbreviation copr.
- Year of first publication
- Name of the copyright owner, an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. The copyright owner has to be a person or legal entity (legally recognized business, organization, foundation, etc.).

A copyright notice identifying Brigham Young University as the copyright owner should be included on all products, publications, labels for video recordings, and other items produced by departments, agencies, divisions, and all groups owned, operated, or sponsored by Brigham Young University. Department designations and related publications information, if included in the publication, should not be part of the copyright notice but may be included in another place in the publication. The copyright notice should appear as follows:

© 2002 Brigham Young University
All rights reserved

Place the copyright notice on the copyright page (the back side of the title page). If a document does not have a title page, place the notice in some other conspicuous place that will give reasonable notice.

If a copyrighted document undergoes major revision and a new edition is prepared, make sure the copyright notice contains the dates of the original edition and of each subsequent edition. If there are major revisions/additions frequently, at least every year, then the inclusive years can be noted as © 1992-2002.

© 1992-2002 Brigham Young University
All rights reserved

Do not change the copyright date when an item is reprinted without revision, or with minor editing changes.

On sound recordings, the symbol P (the letter P in a circle) replaces the copyright symbol © used for printed materials. On labels for sound recordings (compact discs and audio cassettes) that are not part of a set, include the following information:

P 2002 Brigham Young University
All rights reserved

If a copyright notice must vary from the standard format, contact the BYU Copyright Licensing Office for further guidance.

2. Legal Copyright Exemptions

All quotes in this section are from U.S. Title 17.

Sections A, B, and C below explain some of the more important legal copyright exemptions (a privilege to use copyrighted works without permission) in the educational arena. In effect, these exemptions allow the privilege to make certain specified uses of copyrighted works without seeking the copyright owner's permission. These exemptions apply only if your particular situation has met the specific requirements of each exemption.

A. U.S. Copyright Law Section 107: Fair Use

(See Appendix 1, Section 107.)

The Meaning of the Four Fair Use Factors

The purpose of the fair use provision is to allow limited use of copyrighted material without obtaining prior permission from the copyright owner. Consideration of *all* of the fair use factors explained below is required. However, all factors do not have to be on the favorable side to reasonably conclude that a valid fair use claim can be made.

A fair use analysis is fact driven. Each unique set of facts regarding a proposed use leads to its own reasoned conclusion. Reasonable individuals may come to different conclusions concerning the same set of facts, but the operative word is “reasonable.”

The same fair use analysis applies to all formats and mediums, including the digital environment, and includes not only the right of reproduction but also the rights of performance, display, modification, and distribution.

1. Purpose and Character of the Use

This factor will generally weigh in favor of fair use if the proposed use is nonprofit and educational—as opposed to a commercial use. Most uses in the university environment can probably be characterized as nonprofit educational uses. But educational use alone does not automatically result in a finding of fair use, just as a commercial use is not always an infringing one. A nonprofit, educational use would likely favor a finding of fair use, but remember that the other three factors must also be considered. Additionally, with respect to the reproduction right, this factor is more likely to weigh in favor of fair use if the use is transformative rather than verbatim copying.

2. Nature of the Copyrighted Work

This factor will generally weigh in favor of fair use if the work to be used is factual in nature (technical, scientific, etc.), as opposed to works involving more creative expression, such as plays, poems, fictional works, photographs, paintings, and so on. Fair use does not apply to some works, such as standardized tests, workbooks, and works that are meant to be consumed. The case for fair use becomes even stronger when there are only a few ways to express the ideas or facts contained in a factual work. The line between unprotected “facts and ideas” on the one hand and protected “expression” on the other, is often difficult to draw. If there is only one way or very few ways to express a fact or an idea, the expression is said to have merged into the fact/idea, and there is no copyright protection for the expression.

Fair use applies to unpublished works as it does to published works, but the author's rights of first publication may be a factor weighing against fair use if a work is unpublished.

3. Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole

Although there are no numerical or percentage limits, the larger the amount of a work one uses, the less likely it will be fair use. This deliberate flexibility in the statute allows each situation to be judged on its specific facts and allows the doctrine to be practical in the higher education setting. This factor also takes into consideration the quality of the portion taken as well as the quantity. Sometimes, even if only a small amount is taken, this factor may weigh against fair use if the portion can be justly characterized as “the heart of the matter.” It is not difficult to see how this factor and the fourth factor, market effect, work in tandem. The more of the original taken, in amount and substantiality, the greater the negative impact on the market for the copyrighted work.

4. The Effect of the Use on the Market for or Value of the Copyrighted Work

This factor examines the anticipated effect of the use on the publisher's market. If the proposed use is likely to become widespread and would negatively affect the market for or value of the copyrighted work, this factor would weigh against fair use. This factor is often cited as the most important of the four, although the factors all interrelate and must be evaluated in conjunction with each other.

Weighing and Balancing the Factors

A central principle of the fair use analysis is a flexible doctrine that Congress wanted us to test and adapt for changing needs and circumstances. The law provides no clear and direct answers about the scope of fair use or its meaning in specific situations. Instead, we are compelled to return to the four factors and to reach reasoned and responsible conclusions about the lawfulness of our activities. Reasonable people may differ widely on the applicability of fair use, but any reliable evaluation of fair use must depend upon a reasoned analysis of the four factors of fair use. If most factors lean in favor of fair use, the proposed use is probably allowed; if most lean the opposite direction, the action will not fit the fair use exemption and may require permission from the copyright owner. Reliance on a “reasoned” analysis using the Checklist for Fair Use is essential to claiming a good-faith effort.

Procedure for “Fair Use” Analysis

The law permits some “fair” uses if a reasoned analysis is conducted. To do an analysis, use the accompanying Checklist for Fair Use to determine whether portions of copyrighted works may be used without permission. Do this analysis each time you want to determine whether your proposed use of a work falls under fair use. Contact the Copyright Licensing Office if you have any questions regarding the overall analysis and use of the checklist. If desired, review the completed form with the Copyright Licensing Office, 422-9339 or 3760 HBL. To access the fair use checklist electronically, go to <http://copyright.byu.edu>.

Checklist for Fair Use

Please complete this analysis to determine whether your proposed use of a copyrighted work may be used within the scope of Fair Use. Review the completed form with the Copyright Licensing Office, 422-9339 or 3830 HBLL.

Name: _____ Date: _____

Citation/Description of work to be used:

Chapter/Article/Scene Title: _____

Total pages/minutes used: _____

Intended use:

Course (if applicable): _____ # of students: _____

Citation/Description of original work:

Author/Editor/Translator: _____

Publisher: _____

Book/Journal/Movie Title: _____

Total length of original work: _____

1. What is the **PURPOSE** of the proposed use? Check all that apply.

FAVORS FAIR USE

- Teaching
- Research
- Scholarship
- Criticism
- Comment
- Parody
- News reporting
- Nonprofit Educational Institution
- Restricted Access (Available only to students or other appropriate group)
- Transformative or Productive use (Changes the work for new utility; adds value to the work; or does not diminish the market.)

OPPOSES FAIR USE

- Commercial Activity (Ask, will this be sold?)
- Profiting from the use
- Entertainment
- Bad-faith behavior (Ignoring the Copyright law)
- Denying credit to original author
(Lack of or no attribution given to original author.)

2. What is the **NATURE** of the copyright work from which it will be used? Check all that apply.

FAVORS FAIR USE

- Published Work
- Factual or nonfiction based
- Important to favored educational objectives

OPPOSES FAIR USE

- Unpublished work
- Highly creative work (Art, music, novels, films, plays.)
- Fiction

3. What **AMOUNT** of the copyrighted work will be used? Check all that apply.

You should measure the amount of material both quantitatively and qualitatively. Evaluate quantity relative to the length of the entire work and the amount needed. (The reproduction of an entire work weighs against fair use.) A reproduction that is relatively small but still uses the “heart” of the work will also weigh against fair use.

FAVORS FAIR USE

- Small Quantity of work to be used
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

OPPOSES FAIR USE

- Large portion or entire work to be used
- Portion used is central to work or “heart of the work”
- Fiction

4. What is the **EFFECT** on the market or potential market if this item is used? Check all that apply. Reproduction that substitutes for the purchase of the original weighs heavily against fair use.

FAVORS FAIR USE

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

OPPOSES FAIR USE

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable license fee available for using work
- Numerous copies made
- Made openly accessible on the internet or in other public forum
- Repeated or long-term use desired

Completed Analysis: (Check one of the following statements after completing the checklist.)

- Based on the fair use analysis completed above, I have determined that my use of the material falls within the fair use exception.
- Based on the fair use analysis completed above, I have determined that my use of the material does not fit within the fair use exception. I will attempt to obtain permission from the copyright owner before using the materials.

Signature: _____ Date: _____

Position/Title: _____

Notations:

B. U.S. Copyright Law Section 108: Reproductions by Libraries and Archives

(See Appendix 1, Section 108.)

There are many legitimate and beneficial purposes for libraries or archives to reproduce copyrighted works without permission of the copyright holder. Subject to certain provisions and limitations, the provisions of section 108 are intended to ensure that nonprofit libraries are protected from certain types of copying liability.

Libraries within the BYU community qualify for the provisions afforded by section 108 because (1) they are open to the public (2) make reproductions for patrons on a nonprofit basis and (3) include notices of copyright with reproduction. If no copyright notice can be found for the work, a statement indicating that the work may be protected by copyright is sufficient, such as, NOTICE: This material may be protected by copyright law (Title 17 U.S. Code).

Quantity Limitations

Section 108 does not permit the making of unlimited copies of a copyrighted work. Instead, with limited exceptions, only “the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions” is permitted. Copying by a library or archive is not permitted when the library or archive (1) is “aware” of “related or concerted reproduction or distribution of multiple copies of the same material” or (2) “engages in the systematic reproduction or distribution of single or multiple copies” or of articles or small excerpts of a copyrighted work.

The quantity limitations described in Section 108 (a) of “no more than one copy of a work” are different for the purpose of preservation of unpublished works and for replacement of unobtainable published works. For those purposes, a library or archive is permitted to make a maximum of three copies of a copyrighted work, subject to the other conditions set forth in sections 108(b) and (c).

Works Subject to Library or Archival Copying

Generally, the copying rights provided to libraries and archives under section 108 do not extend to musical, pictorial, graphic, or sculptural works, or to motion pictures or other audiovisual works (except audiovisual works “dealing with the news”). This limitation on section 107 privileges does not apply to copying done to preserve and secure unpublished works or to replace published works, as permitted by sections 108(b) and (c). Such copying is permissible, provided the criteria of those provisions are satisfied, regardless of the form of the copyrighted work.

Similarly, section 108(i) permits copying of illustrations, diagrams, or other “pictorial or graphic works published as . . . adjuncts” to articles or other works that a library is permitted to reproduce upon user request in accordance with sections 108(d) and (e).

Preservation and Security of Unpublished Works

Under section 108(b), a library or archive may make three copies of an unpublished work in its collection “solely for purposes of preservation and security” or “for deposit for research use in another library” if that other library meets the open-collection requirement of section 108(a)(2). A copy that is made in digital format may not be distributed or made available to the public outside the premises of the library or archive.

Replacement of Unobtainable Published Works

Section 108(c) permits a library or archive to make up to three copies of a published work “solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete.” A format is considered obsolete if “the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.”

Copying for replacement purposes is permissible only if the library or archive has, “after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.” Although the statute does not explicitly define what constitutes a “reasonable effort” in this regard, this provision is intended to require “recourse to commonly-known trade sources in the United States” and “in the normal situation also to the publisher or other copyright owner or an authorized reproducing service.”

Any copy made for these purposes in digital format is not to be distributed or made available to the public outside the premises of the library or archive.

Reproduction of Articles or Excerpts of Copyrighted Works at Request of Users

Suppose a researcher desires a copy, for his or her own personal use, of a single scholarly article published in an obscure periodical from a university collection. Is that researcher required to purchase a copy of the periodical or to obtain a license from the copyright holder to reproduce the article? Because there is a practical need for students and researchers to maintain personal copies of such materials, section 108(d) permits a library or archive to copy, at the request of a user, “no more than one article or other contribution to a copyrighted collection or periodical issue, or ... a small part of any other copyright work,” if two conditions are satisfied:

1. The copy becomes the property of the user, and the library or archives have had no notice that the copy would be used for any purpose other than private study, scholarship, or research; and
2. The library or archives display prominently, at the place where orders are accepted, and include on their order forms a warning of copyright in accordance with requirements from the Register of Copyrights.

Reproduction of Entire Copyrighted Works at Request of Users

Another situation frequently faced by patrons is the need for books or other publications that are no longer in print or for manuscripts, letters, and other archival materials that are maintained only in libraries or otherwise are not publicly available. Under section 108(e), a library or archive may copy entire works upon user request if it has no notice of non-scholarly use and displays a copyright warning. The library or archive also must have “first determined, on the basis of a reasonable investigation, that a copy of the copyrighted work cannot be obtained at a fair price.”

Unsupervised Copying by Library Users

As long as all reproducing equipment located on library or archive premises displays “a notice that the making of a copy may be subject to the copyright law,” section 108 does not impose liability on either the library or archive or its employees for unsupervised use of that equipment by library users. Nonetheless, section 108 does not clear the user of infringement if the user’s copying exceeds that permitted as fair use under section 107.

Broadcast News Programs

Section 108(f) (3) was intended to protect operations that make copies of news broadcasts available to the public for scholarly research. It states that the provisions of section 108 do not “limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program,” subject to the basic requirements of section 108(a).

Effect of Section 108 on Other Rights and Obligations

The Copyright Act specifically recognizes that there may be some overlap between the “safe harbor” for certain library and archival copying under section 108 and the general limitations on the exclusive rights of copyright embodied in the fair use doctrine, as set forth in section 107. Specifically, section 108(f) (4) provides that nothing in section 108 “in any way affects the right of fair use as provided by section 107.” Section 108 also does not affect any contractual obligations entered into by a library or archive “when it obtained a copy of a work in its collections.” It is common, for example, for owners of materials such as personal letters and original manuscripts to provide them to a library subject to certain limitations on when or how the materials may be made available for public inspection. Section 108 would not override any such contractual agreement or grant library users any right of access to such materials that would conflict with the library’s contractual obligation to the copyright holder.

Another area affecting the rights of the copyright owners in the library environment is the acquisition and licensing of digital products, such as databases, e-journals, digital media, and so on. Here again, the provisions of section 108 or any other sections of the copyright law would not, in most cases, override the terms and conditions of the contracts or license agreements governing those products. Library personnel are encouraged to become familiar with the specific conditions and limitations of the license agreements accompanying digital products acquired by the library.

Flowcharts that assist in photocopying decisions within the allowances of sections 107: Fair Use and section 108: Libraries, appear at the end of this document (see Appendix II).

C. U.S. Copyright Law Section 110: Exemption of Certain Performances and Displays

(See Appendix I, Section 110:1-4.)

Section 110 (1) contains the exemptions for the performance and display rights essential to nonprofit, educational classroom settings. Section 110 (2) contains the exemptions for digital transmission (distant education) of performances and displays of certain works in accredited, nonprofit educational settings.

TEACH ACT AMENDED SECTION 110 (2)

Signed into law November 2, 2002

Laura N. Gasaway 2002

ISSUE	110(1) CLASSROOM EXEMPTION	OLD 110 (2) INSTRUCTIONAL BROADCASTING	NEW 110 (2) TEACH ACT
ELIGIBILITY	Nonprofit educational institutions	Nonprofit educational institutions & government bodies	Accredited nonprofit education institutions & government bodies
ACTIVITY	Face-to-face teaching	Transmissions of performances & displays for instruction	Transmissions & over digital networks
WORKS COVERED	All works	Limited to performance of nondramatic literary & musical works but display of all works	Same + reasonable & limited portions of other works – except works produced of marketed primarily for display as part of mediated instructional activity via digital network
LIMITATIONS	For instruction, not entertainment	Systematic instruction, directly related & of material assistance to teaching content	Display of any work in amount comparable to that typically displayed in live classroom. Performance of reasonable & limited portions of all except nondramatic literary & musical works (full for these)
GENERAL LIMITATION	None	None	(1) Systematic mediated instructional activity (2) At direction of or under actual supervision of instructor (3) Integral part of class session
COPY RESTRICTIONS	For audiovisual works, copy must have been lawfully made	None	For all works, copy must have been lawfully made
WHERE	In a “classroom”	In a classroom or other place normally devoted to instruction, or anywhere for disabled recipients or those with other special circumstances prevent attendance in classroom	Anywhere with technological conditions met
WHO	Students & teachers	Students, teachers, government employees in the course of their employment	Solely for students officially enrolled in course or officers or government employees as part of official duties or employment
TECHNOLOGICAL RESTRICTIONS	No transmission	None	(1) Apply technological measures that reasonably prevent recipients from retaining works beyond the class session & further distributing them (2) No interference with technological protections taken by copyright owner that prevent retention & distribution
DIGITIZING WORKS	Not mentioned	Not permitted	Okay to digitize portion of analog work in amount authorized under 110 (2) if: (1) No digital version is available or (2) Digital version available subject to technological measures that prevent its DE use
LIABILITY	Infringement	Infringement	Infringement but not for: (1) Automatic transient for temporary storage or (2) Loading copies of works that embody 110 (2) authorized performances

Face-to-Face Classroom Setting: Section 110 (1)

Educators and students may perform or display a copyrighted work in the course of face-to-face teaching at a nonprofit educational institution in a classroom or other place normally devoted to instruction. There are no restrictions on the type or length of work and the copyright owner's permission is not necessary.

In the Course of a Transmission: Section 110 (2)

Section 110 (2) was recently revised by enactment of The Technology, Education, and Copyright Harmonization Act (TEACH) which was signed into law on November 2, 2002.

TEACH allows the digital transmission of performances and displays of copyrighted works, without having to obtain prior permission from the copyright owner, as part of synchronous or asynchronous distance education applications if certain requirements are met.

TEACH Requirements:

WHO:

- Accredited, nonprofit educational institution
- Controlled by or under the actual supervision of the instructor

WHAT:

- Performances of nondramatic literary works or musical works
- Performances of reasonable portions of any other work, or
- Display of any other work in an amount comparable to that typically displayed in a live classroom setting

BUT NOT:

- Digital educational works (Works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks) or,
- Unlawful copies (copies you know or reasonably should know were not lawfully made or acquired)

WHEN:

- As an integral part of a class session, and
- As part of systematic mediated instructional activities, and
- Directly related and of material assistance to the teaching content

HOW:

- Transmission made solely for and reception limited to (as technologically feasible) students enrolled in the course, and
- Technological measures that reasonably prevent:
 - a. Retention in accessible form for a class session and
 - b. Unauthorized further dissemination in accessible form, and
 - c. No interference with copyright holder's technological measures that prevent such retention and dissemination

CONDITIONS ALLOWING CONVERTING ANALOG TO DIGITAL:

- No digital version available to the institution, or
- The available digital version is technologically protected to prevent TEACH uses

GENERAL INSTITUTIONAL REQUIREMENTS:

- Disseminate copyright policies
- Provide accurate information about copyright
- Promote copyright compliance
- Provide notice to students that course materials may be protected by copyright

Instructors who want to incorporate works into digital transmissions for instructional purposes applying TEACH should:

- Avoid use of commercial works that are sold or licensed for purposes of delivery of digital content for distance education purposes.
- Avoid use of pirated works, or works where you otherwise have reason to know the copy was not lawfully made.
- Generally, limit use of works to an amount and duration comparable to what would be displayed or performed in a physical classroom setting. In other words, TEACH does not authorize the digital transmission of textbooks or coursepacks to students.
- Supervise the digital performance or display, make it an integral part of a class session, and make it part of a systematic mediated instructional activity. In other words, the faculty should interactively use the copyrighted work as part of a class assignment in the distance education course. It should not be an entertainment add-on or passive background/optional reading.
- Use tools provided by the university to limit access to the works to students enrolled in the course, to prevent downstream copying by those students, and to prevent the students from retaining the works for longer than a “class session.”
- Notify the students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

The following *Checklist for Compliance with TEACH Act* is a good tool to assure your compliance with TEACH.

Checklist for Compliance with the TEACH Act

Please complete this checklist to determine whether your proposed use of a copyrighted work is appropriate within the scope of the TEACH Act. Specific questions regarding the application of TEACH should be directed to the Copyright Licensing Office.

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

TEACH Act requirements that will likely fall within the duty of the Instructor:

1. What type of work will be transmitted? Check all that apply.

FAVORS TEACH ACT

- A performance of a non-dramatic literary work
- A performance of a non-dramatic musical work; or
- A performance of any other work, including dramatic works and audiovisual works, but only in “reasonable and limited portions”, or
- A display in an amount comparable to that which is typically displayed in the course of a live classroom session.

OPPOSES TEACH ACT

- Marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity; or
 - A textbook, course pack, or other material in any media which is typically purchased or acquired by students for their independent use and retention.
2. Any permitted performance or display must be both:
- Made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities of the educational institution; and
 - Directly related and of material assistance to the teaching content of the transmission.
3. The institution does not know or have reason to believe:
- The copy of the work to be transmitted was not lawfully made or acquired.
4. If the work to be used has to be converted from print or another analog version to digital format, then both:
- The amount of the work converted is no greater than the amount that can lawfully be used for the course; and
 - There is no digital version of the work available to the institution or the digital version available to the institution has technological protection that prevents its lawful use for the course.

TEACH Act requirements that will likely fall within the duty of the Institution:

- 5. The institution for which the work is transmitted is an accredited nonprofit educational institution.
- 6. The institution has instituted policies regarding copyright.
- 7. The institution has provided information materials to faculty, students, and relevant staff members that describe and promote US copyright laws.
- 8. The institution has provided notice to students that materials used in connection with the course may be subject to copyright protection.
- 9. The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.

TEACH Act requirements that will likely fall within the duty of the Information Technology Officials:

- 10. Technological measures have been taken to reasonably prevent both:
 - Retention of the work in accessible form by students for longer than the class session; and
 - Unauthorized further dissemination of the work in accessible form by such recipients to others.
- 11. The institution has not engaged in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or dissemination of their works.
- 12. The work is stored on a system or network in a manner that is ordinarily not accessible to anyone other than anticipated recipients.
- 13. The copy of the work will only be maintained on the system or network in a manner ordinarily accessible for a period that is reasonably necessary to facilitate the transmissions for which it was made.
- 14. Any copies for the purpose of transmitting the work are retained and solely used by the institution.

This document is provided as a courtesy of the Copyright Management Center, IUPUI, 530 W. New York St., Indianapolis, IN 46202. For further information and updates please visit <http://www.copyright.iupui.edu/>. This document was last updated February 21, 2005.

3. Remedies for Copyright Infringement

If copyright owners claim that their copyrights have been infringed, they may sue for infringement of the works and seek the following remedies:

- Temporary and permanent injunction against infringement
- Impoundment of infringing copies
- Destruction or other reasonable disposition of the infringing copies and any masters or negatives of infringing copies
- Actual damages to the owner
- Profits of the infringer attributable to the infringement
- Court costs and reasonable attorney's fees and
- Statutory damages

In lieu of actual damages and profits a copyright holder may seek statutory damages up to \$150,000 per infringement depending on the willfulness of the infringement.

If employees of a nonprofit educational institution have made rational and reasonable fair use determinations, they are not likely to be targeted for an infringement lawsuit because of section 504(c)(2), the good faith fair use defense. Under this section, a court may remit (forgive) statutory damages to zero in any case where infringers believe, and have reasonable grounds for believing, that their use of a copyrighted work is a fair use—if the infringers were employees of nonprofit educational institutions, libraries, or archives acting within the scope of their employment.

4. Introduction to the Copyright Licensing Office

The BYU Copyright Licensing Office (CLO) exists to assist BYU employees and students with issues relating to all aspects of copyright and licensing. The CLO works closely with the university's legal office, the Office of the General Counsel (OGC), to ensure fair and consistent compliance and interpretation of the United States Copyright Law.

A. Copyright Services

The following copyright services are offered at the CLO

- Online copyright education
- Classroom presentations on copyright and fair use
- Staff and department training
- Individual consultation (appointment preferred)
- Copyright policy review and clarification
- Copyright law applied in collaboration with the BYU Office of General Counsel
- Copyright registrations

B. Licensing Services

The CLO can do the following to help you with licensing issues:

- Assist with researching the source of material
- Identify copyright owner information
- Request permission for use

- Obtain and sign license agreements
- Process payment of licensing fees
- Offer licensing tutorial and training
- Provide licensing contracts and agreements for selected BYU-owned works

C. Maintaining Licensing Records and Database Information

The CLO maintains a repository for licensing documents. It maintains actions and restrictions of licensing agreements; produces reports for renewals, residual payments, conditions, etc; and is a central source for publisher and copyright owner information.

D. Contact Information

The CLO is located in room 3760 of the Harold B. Lee Library (HBLL). Questions may be directed to (801) 422-9339. Facsimiles may be sent to (801) 422-0463. Additional information about the CLO is provided at the website <http://copyright.byu.edu>. The Director of the CLO is Carl Johnson; Associate Director is Susie Quartey; and the Office of the General Counsel attorney is Paul Angerhofer.

E. Copyright Tutorial

The CLO developed an online educational tool to help the campus community understand the basics of copyright. Found at <http://copyright.byu.edu>, this online tutorial is designed to assist faculty, staff, and students learn what rights a copyright owner has; the legal exemptions that exist for educators, such as fair use; and case studies to analyze and solve. It is also available on CD, by request, at no charge. The tutorial was developed in three interactive modules and includes short videos, case studies, reference material, and an online game (final test).

After faculty have taken the tutorial, they are encouraged to have their students also take the tutorial as part of their coursework or offer it to students for extra credit. It takes less the two hours to finish it. The tutorial can be completed in one setting or in sections. A certificate is generated upon the successful completion of the tutorial's game which is sent directly to the professor who is using it in their course. When the professor receives the e-certificate, it can be assigned a pass/fail value, a specific point value, or any other value the professor prefers to use. Several faculty members have incorporated the tutorial into a section on ethics, but it can easily fit into other areas of study. Once the tutorial is finished, a printed certificate can also be generated and picked-up at the CLO if an individual (including faculty) request it in place of an e-certificate.

F. Submitting a Request to the CLO (for those in the BYU Community)

To submit a copyright permissions request to the CLO go to our website: <http://copyright.byu.edu>. After logging in you may enter your request. This is a copyright permissions service for BYU faculty and staff. After the completed form is submitted, you will receive verification that your request was received. The average request is completed in approximately 4 ~ 6 weeks.

G. Submitting a Request to Use BYU-Owned Materials (those outside the BYU Community)

Specific requests should be submitted in writing well before the date you require permission. Please furnish the following information:

1. The titles of the works requested
2. The names of the authors/artists/creators
3. Any further descriptions that might be necessary to clearly identify the works and the portions to be used. (Photo or digital copies are very helpful)
4. Your source for the materials, including information such as the library call #, box #, file folder #, issue dates, page numbers, and any accompanying copyright notices or credit lines.
5. The size and color anticipated for reproduced art or photos
6. The title and description of your proposed publication
7. The format of your publication: paper, electronic, Internet, CD-ROM, etc.
8. The commercial aspects (if any) of your publication: the price for which it will be sold, the method and scope of marketing, etc.
9. The approximate number of copies anticipated to be produced
10. The estimated date of publication or manufacture
11. Specify publisher, if known

Please specify if you need quality copies or originals (such as color transparencies, black and white prints, digital copies, video sub masters, etc.) to ensure high quality reproduction. A processing charge, separate from any royalty fee, may be charged for furnishing such items. Please explain the purpose and nature of your publication/product and an explanation of the context in which the materials obtained from BYU will be used. Address your request to:

Carl M. Johnson, Director
Copyright Licensing Office
Brigham Young University
3760 Lee Library
Provo, UT 84602-6845

(801) 422-3821 (Phone)
(801) 422-0463 (FAX)
carl_johnson@byu.edu

5. Digital Millennium Copyright Act (DMCA)

The Digital Millennium Copyright Act (DMCA) is a lengthy and complex piece of legislation that was signed into law on October 28, 1998. The following summarizes the most pertinent provisions of the DMCA affecting higher education. The Act is divided into “titles,” and the organization of this summary reflects those title numbers.

Title I: WIPO Copyright Treaties Implementation

A. New Prohibitions on Using Copyrighted Works. This provision prohibits anyone from circumventing a “technological measure” that controls access to copyrighted works and prohibits removal of “copyright management information” from any work (under most circumstances). For example, an action that bypasses the owner’s restrictions and conditions on access to databases could become a violation of federal law. In addition, removing a

copyright notice or removing the names of authors from any work also could be a violation if the removal concealed or allowed infringement of a copyright work. These provisions allow copyright owners to impose technological controls and other restrictions on the use of their works.

B. Exceptions for the Benefit of Education and Libraries. First, the prohibition on circumventing technological restrictions took effect October 28, 2000. Second, once taking effect, the restrictions do not apply to particular classes of works and to particular persons if they would “adversely affect” the ability to make “non-infringing uses” of those works, as determined by the U.S. Copyright Office. Third, libraries will be allowed to circumvent protections if they are reviewing the work in good faith for purposes of determining whether to purchase it. Fourth, the DMCA specifies that nothing in it will affect rights of fair use. This new law imposes a responsibility on both educators and librarians to respect the rights of copyright owners and to disregard, in some instances, measures that otherwise block lawful uses of copyrighted works.

C. Three-Year Review of the Law. During the initial two years after enactment, and every three years thereafter, the Librarian of Congress, upon recommendation of the Register of Copyrights, is required to conduct proceedings to examine and review the effect of the restrictions on the availability and use of copyrighted works, especially for education and libraries.

D. Encryption Research and Reverse Engineering. Researchers in these areas often need to circumvent technological controls in order to reverse engineer software or to undertake encryption research for the purpose of testing and improving the effectiveness of such controls. The DMCA allows continuance of those activities but only under defined circumstances.

Title II: Online Service Provider Liability

Reduced Risk of Infringement Liability for University Computer Networks. For universities that provide Internet access, the DMCA reduces risks of copyright infringement liability as an online-service provider (OSP), subject to conditions specified in the Act. An OSP is defined broadly as “an entity offering the transmission, routing, or providing of connections for digital online communications.”

Possible infringements may occur when a user of the network or system transmits copyrighted works, caches works in computer memory, includes a work on a website, or possibly even links to an infringing work on another site. The university can reduce liability for infringements committed by users if the university is acting solely as a conduit for the transmission of information. However, there may still be liability for the individual who committed the infringement.

The university may eliminate liability by meeting technical conditions as to the structure of the network system and procedural conditions, such as the following:

- Designating a university agent who would receive notifications of claimed infringements submitted by third parties. The U.S. Copyright Office records this information and provides a publicly available directory of such agents.
- Implementing, administering, and tracking notifications of claimed infringements committed by users of the system and expeditiously removing or disabling access to material.
- Adopting a policy and informing subscribers and account holders of the policy that would terminate the service of a subscriber or account holder who repeatedly infringes the copyrights of third parties.
- Removing or disabling access to materials if the university obtains knowledge of infringing activity or becomes aware of facts that suggest infringement.
- Adhering to technical requirements for the storage and transmission of the infringing materials and all materials that may be communicated on the OSP's system or network.

Ordinarily, an employer is likely to be liable for the unlawful activities of employees acting within their duties at the workplace. Thus, if the university provides email and website services to faculty members for their teaching and research, the university may not be acting as a “mere conduit” for the communication, as would a typical OSP. Instead, the university may be liable, as would any other employer. However, the DMCA extends the OSP protection to the university in the context of faculty activities, but it is subject to additional conditions:

- The OSP is a public or nonprofit educational institution.
- The claimed infringements are made by a “faculty member or graduate student who is an employee” of the university and who is “performing a teaching or research function.”
- The infringing activities do not involve providing online access to “required or recommended” instructional materials.
- The university has not received more than two formal notices of claimed infringement during the preceding three years with respect to that faculty member or graduate student.
- The university provides “all users of its system or network” information about copyright, and that information must “accurately describe, and promote compliance with, the laws of the United States relating to copyright.”

The university is expected to implement administrative processes, beginning with the appointment of a “designated agent” who will receive claims of infringement and institute the process of removing offending materials from the university network. Further, the process of notification of claimed infringements, the rigid opportunity for the individual to justify the activity as fair use or as otherwise permitted under the law, the university’s commitment to remove the material, and the university’s obligation to terminate email and website privileges for some faculty, may all result in violations of academic freedom and constitutional principles of due process and free speech, if they are not handled in a cautious manner.

In exchange for meeting these conditions, the university receives reduced liability. However, it is protected from liability arising only from the copyright infringements but not from other legal claims that may arise from the same activity, such as breach of contract, trademark infringement, or defamation.

BYU has established the Copyright Licensing Office to satisfy the provisions explained above. The Director of the Copyright Licensing Office, Carl M. Johnson, is the designated agent to administer these provisions of the DMCA. BYU has established specific policies governing “Notification of Claims of Copyright Infringement”. These policies and related information are available on the CLO website and in the University Electronic Handbook.

Title IVB: Additional Provisions of Importance to the University

Library Copying and Preservation. The amendments to Section 108 of the Copyright Act offer good and bad news for libraries. First, they clarify and assure that preservation copies of unique or deteriorating works may be made in digital formats; however, the digital version may be used only on the library premises. Second, they allow the library to copy works if the works are currently in formats that have become technologically obsolete. Finally, the amendments address a long-standing controversy caused by Section 108 by specifying that all copies made by the library under Section 108 must include the formal copyright notice, if available, or a specified statement about the applicability of copyright to the work.

This summary is an adaptation of a document prepared by the Indiana University Copyright Management Center. The original was the work of Dwayne Buttler, former Coordinator of the CMC; Noemi Rivera-Morales, doctoral student in the IU School of Library and Information Science; and Professor Kenneth Crews.

III. COMMON COPYRIGHT APPLICATIONS

These specific applications include situations, scenarios, or questions that have been addressed previously by the Copyright Licensing Office. Although information is provided to explain the specific situations listed below, each new situation needs to be evaluated on the facts and circumstances that surround it.

1. Myths of Copyright

Here are a few myths regarding copyright and the use of material protected by copyright.

Myth: I don't need permission because I am only using a small amount of the copyrighted work.

False. While copying a small amount of a copyrighted work may not be a copyright infringement, there are no clear rules regarding what constitutes permitted use of small amounts of copyrighted materials. In one case, a magazine article that used 300 words from a 200,000-word biography written by President Gerald Ford was found to infringe the copyright on the autobiography. Even though the copied material was only a small part of the autobiography, the copied portions were among the most powerful passages in the autobiography. *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985).

See the explanation of fair use under Myth # 4 below and in Section II, page 9.

Myth: I purchased a book, artwork, photograph, compact disc., or videotape that I'm going to copy, so I already have permission.

False. Copyright law distinguishes between ownership of the copyright in a work and ownership of a copy of the work, such as a tape, compact disc, videotape, book, or photographic print. This ownership of a copy of the copyrighted work does not give permission to exercise the exclusive rights of the copyright owner. However, you can, without the permission of the copyright owner, "sell or otherwise dispose of" your copy.

Myth: Because I "innocently" infringed I do not think I need permission.

False. Lack of intent to infringe is not a defense to copyright infringement—nor is ignorance of the copyright law.

Myth: Because I am using someone's copyrighted works for non-profit educational use, I don't need permission.

False. Copying for educational or non-profit use may be fair use; but is not, in all cases necessarily a fair use. The type of use is only one of the factors that determine whether a use is fair or not. All of the four factors of fair use must be considered. Copyright law provides no clear and direct answers about the scope of fair use or its meaning in specific situations. If most factors lean in favor of fair use, the proposed use is probably allowed; if most lean the

opposite direction, the use will not fit the fair use exemption and may require permission from the copyright owner. Reliance on a “reasoned” analysis using the *Checklist for Fair Use* is essential to claiming a good-faith effort. For a detailed explanation of fair use see the Fair Use explanation, section 2, page 8.

When permission is needed and obtained, many copyright owners/publishers will often give permission to non-profit educational institutions without a fee.

The "fair use" concept varies from country to country, and has different names (such as "fair dealing" in Canada) and other limitations outside the USA.

Myth: The work I want to use doesn't have a copyright notice on it, so it's not protected by copyright and I'm free to use it.

False. For works published after March 1, 1989, the use of a copyright notice is optional. If a work is published without a copyright notice it doesn't necessarily mean the work is not protected by copyright.

There are benefits for including a copyright notice, but the law now states “a notice of copyright...**may** be placed on publicly distributed copies” but is not required. The correct form of a copyright notice is:

© or the word “Copyright” [year of first publication] by [author/owner]

Myth: Since I'm planning to give credit to the authors who created the works I copy, I don't need to get permission.

False. If you give credit to a work's author, you are not a plagiarist (you are not pretending you authored the copied work). However, attribution is not a defense to copyright infringement. Plagiarism can occur for material either protected or not protected by copyright simply by incorrectly taking credit for it. Copyright infringement occurs when you use material protected by copyright without the copyright owner's permission.

Myth: I don't need permission because I am going to alter the work I copy.

False. You could still be liable for copyright infringement by altering or modifying the work you copy. You can use elements of works not protected by copyright, but if you copy and modify protected elements of a copyrighted work, you could be infringing the copyright owner's modification (derivative work) right as well as the duplication right.

Myth: The author of the work that I want to use lives outside of the US, so the work is not protected by copyright in the United States.

False. Do not assume a work lacks copyright protection in the United States because its author is a non-U.S. author. Non U.S. authors who live in countries that belong to the Berne Convention or the Universal Copyright Convention automatically obtain copyright protection in the US. Most major countries are members of at least one of these conventions.

Myth: If there is no charge for the copies then it is not copyright infringement.

False. Not charging for the copies does not automatically make the copying permissible. Since some non-profit educational uses do not qualify as fair use, such organizations are not immune from copyright infringement.

Myth: Material I obtain from the Internet is in the public domain and no permission is required.

False. Works protected by copyright are not in the public domain unless: the owner explicitly puts them into the public domain, the copyright protection has expired, or the works were created by employees of the federal government. Placing material protected by copyright on the Internet may imply intent by the copyright owner to make the material more widely available, but this does not mean they have granted permission to further duplicate and/or distribute their material.

On many web sites, the web publisher has indicated the allowed uses; check for links identified as copyright information, use information, copyright policy, etc. for an explanation of such permitted uses.

Myth: If I don't defend my copyright I may lose it.

False. Copyright protection is effectively never lost, unless explicitly given away or the copyright has expired. However, if you do not actively defend your copyright, there may be broader unauthorized uses than you would like. It is a good idea to pursue enforcement actions as soon as you discover misuse of your copyright protected material.

2. Considerations for Copying

Exceptions to the general prohibition of non-consented copying of copyrighted materials are discussed in this section. Some copying of copyrighted materials without the consent of the copyright owner is permissible as “fair use,” as indicated in section II. 2. a. herein. Non protected materials and materials in the public domain can be copied. The CONFU (Conference on Fair Use) Guidelines for Educational Multimedia and the Agreement on Guidelines for Classroom Copying may also be used to assist in making decisions about specific circumstances (see Appendices 3 and 4).

- a. Single copying of limited amounts by teachers for scholarly research or teaching is permitted. Guidelines that explain fair use for this purpose are described in the legislative history of the Copyright Act of 1976, which includes an agreement between academics and publishers entitled “Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions” (see Appendix 3).
- b. Multiple copies for classroom use are permitted under very limited circumstances. Multiple copying of copyrighted materials for classroom use is permitted only in circumstances that satisfy limitations on length, cumulative effect, and spontaneity. For example, the fair use guidelines provide for copying and distribution to students of a

single chapter of a book, a short story, a single poem of limited length, or an essay where the copied item is used for the first time and the inspiration to use the piece occurred so close to the time of use that insufficient time is available to obtain permission. A more detailed discussion of the limitations of this exception is included in the “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” (see Appendix 3).

- c. Copying of multimedia works is governed by the same rules of copyright law and exemptions as previously explained. Guidelines have been prepared as part of the CONFU process and provide “safe harbor” for using multimedia works (see Appendix 4).
- d. Use of copyrighted work in anthologies (i.e., collections of selected works of a number of authors, coursepacks, etc.) and in other collections of materials, which often are assembled at the beginning of the term and are frequently used from year to year, will rarely, if ever, qualify as fair use. The “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” specifically describes anthologies as falling outside the fair use exemption. Ordinarily, anyone assembling an anthology should assume that permission must be obtained. Permission can often be obtained by writing to the publisher but may require payment of a fee. Copying services sometimes have procedures in place to assist customers in obtaining permissions. *No material for distribution on campus that is published without permission (even if considered fair use) may be duplicated at commercial copying services.* Fair use cannot include a profit element, not even the profit commercial copiers derive from their copying services.
- e. Copying of copyrighted works for library reserve use is subject to restrictions similar to those for classroom use. These guidelines also apply to copying for library reserve use if the copies are placed on reserve as an extension of classroom readings. As a general rule, the placement of materials on reserve that are intended for every student in a class to read, and which the students will likely copy, will require permission of the copyright owner unless the copying satisfies the fair use guidelines on spontaneity, brevity, etc. The essential point is that faculty may not place materials on reserve to avoid obtaining permission and paying royalties.

Flowcharts which assist in photocopying decisions within the allowances of sections 107: Fair Use and section 108: Libraries, appear at the end of this document (see Appendix 2).

3. Unpublished Works

The significance of December 31, 2002

Before December 31, 2002 no unpublished works had entered the public domain. Unpublished works whose term of copyright would have otherwise expired (1) 70 years after the death of the author or (2) 120 years from their date of creation (for anonymous works and works made for hire), received a special legal/statutory copyright protection until December 31, 2002. After December 31, 2002, copyright duration for unpublished works expire within the time limits of (1) and (2) above.

Explanation

Unpublished works, for example, manuscripts, photographs, paintings, home movies, and computer software—retain copyright protection for seventy years after the death of the author. This is true for unpublished works by both American and foreign authors regardless of the country in which the unpublished works were created. An unpublished work that is a work made for hire (company, business, or employer) or a pseudonymous or anonymous work is protected for 120 years from the date of creation. If the unpublished work is subsequently published between January 31, 1978 and December 31, 2002, the copyright will not expire before December 31, 2047, no matter when the author died.

For example, the famed novelist Ernest Hemingway died in 1961, leaving behind an unpublished novel called *True at First Light* that was published in 1999. The novel would be copyrighted until December 31, 2031 (seventy years after Hemingway's death), if the ordinary term of seventy years after death applied. Because of this special rule, the copyright will last until December 31, 2047.

Authors Deceased Over 70 Years

Since the copyright in unpublished works lasts until seventy years after an author dies, one would naturally think that all unpublished works created by people who have been dead more than seventy years are now in the public domain. However, this is not the case. Under a special provision in the law, the copyright in a work that was created but not published before January 1, 1978 did not expire before December 31, 2002, no matter when the author died. This means that all works of authorship created, but not published, before 1978 remained under copyright at least until December 31, 2002. Obviously, this is a large body of work and the date December 31, 2002 is an extremely important one for anyone interested in the public domain. The reason for this rule is that under the copyright law in effect before 1978, unpublished works received perpetual copyright protection. A new copyright law that took effect in 1978 did away with this perpetual protection and limited the copyright terms for unpublished works to life plus seventy years. However, Congress felt it was unfair for all unpublished works by authors who had died more than seventy years before 1978 to immediately enter the public domain. Instead, it gave such works an additional twenty-five years of copyright protection.

For example, let's suppose a diary written by a great-great-aunt who died in 1900 was found. Since the diary was never published, it remained under copyright until December 31, 2002, even though the author died in 1900. The aunt's heirs owned the copyright in the diary.

Moreover, if such a work was published between January 1, 1978, and January 1, 2003, the copyright will not expire until December 31, 2047. This is so regardless of when the author died. This means the copyright owner could automatically extend the copyright term of such unpublished works for forty-five years simply by publishing them before January 1, 2003.

On Jan. 1, 2003, all unpublished works whose authors died in the year 1932 or earlier entered the public domain. On January 1 of every year thereafter, another year's worth of unpublished works will also enter the public domain. For example, on January 1, 2004, unpublished works by

authors who died during 1933 will enter the public domain; on January 1, 2005, unpublished works by authors who died during 1934 will become public domain, and so on. (See *The Public Domain*, Stephen Fishman, pp. 18/8-18/10.)

The definition of an Unpublished Work

Those works not distributed or offered for distribution to the public.

Unpublished Foreign Works

Generally, the copyright duration for unpublished foreign works is the same as those created in the United States.

Personal Letters and Journals

Personal letters and journals do not enjoy perpetual copyright protection. Congress eliminated perpetual copyright protection with the implementation of the 1978 Copyright Act.

4. Guidelines for Showing Films, Movies, Videos, DVDs (Motion Pictures)

When individuals or groups such as student clubs and associations consider showing films, movies, videos, DVDs (hereafter referred to as **motion pictures**) on campus, answers to the following questions will assist in making correct decisions.

A. Are motion pictures protected by copyright?

Copyright ownership gives the copyright owner a bundle of rights, which include the right to permit or prohibit reproduction, derivative works, distribution, and **public performance** or display of original creative works. You should assume all motion pictures are protected by copyright, therefore the copyright owner owns the public performance right.

B. Is showing/playing a motion picture a private or public performance?

To perform or display a work "publicly" means--

- i. to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;*
- ii. to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. (Title 17, U.S.C., Section 101, Definitions)*

The public performance right allows the copyright owner to control when the work is performed "publicly." A performance is considered "public" when the work is performed in a "place open to the public *or* at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered" (17 U.S.C. § 101). Under this definition, you can probably have a small private party at which you play music, a video or a DVD. Large parties – if they go beyond the amorphous definition of your “social

acquaintances” – pose problems. Also, it does not matter how many people actually view the performance if the place of performance or display is “open to the public.” Regardless of audience size, any performance open to the public is illegal without a special public performance license.

C. What does "home use only" mean?

Unless motion pictures are sold or rented with public performance rights or are licensed for public performance, they should be considered "home use only" and should be restricted to private showings in the home to a "normal circle of a family and its social acquaintances." The only exception to this is the "face-to-face teaching exemption."

D. What is the "face-to-face teaching exemption"?

The copyright law contains an exemption which allows the lawful use of motion pictures for performance or display without the permission of the copyright owner. Section 110 (1) of the law allows the classroom use of motion pictures if all of the conditions described below are met:

Notwithstanding the provisions of section 106, the following is not an infringement of copyright: (1) 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, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made; ...

(Title 17, U.S.C., Copyrights, Section 110 (1), Limitations on exclusive rights:
Exemption of certain performances and displays)

The following conditions must be satisfied in order for the performance to be exempt:

Section 110(1) Teaching Activities of a Nonprofit Educational Institution:

- The performance must be by the instructors or pupils;
- The instructor and pupil(s) must be in the same place (transmissions by digital means, television, etc., do not qualify here although they may qualify under 110(2));
- The activity must be a teaching activity and not recreation or entertainment;
- The activity must be by a nonprofit educational institution;
- The activity must take place in a classroom or other area used as a classroom for face-to-face teaching activities; and

In the case of performance of a motion picture, the copy must have been lawfully obtained. For example, one cannot show an illegally down-loaded copy of a videotape or DVD since it would not have been made in accordance with the provisions of the copyright law.

E. How do I find out if a motion picture has public performance rights?

Determine what rights are attached to a motion picture at the time it is purchased or acquired, and make note of that information. Know that the motion picture is a legal copy and know if the merchant has the right to grant or convey public performance rights or not.

Look for rights information on the video label, container, or on the screen. Motion pictures with "home use only" rights usually, but not always, have statements indicating home use. Do not assume that a motion picture has public performance rights if "home use" or wording to that effect is not indicated. In most instances, motion pictures with public performance rights rarely have that information specifically stated.

F. Where can I obtain more information for possibly obtaining a license to show (publicly perform) a motion picture on campus?

Campus Life/Events and Services, 3458 WSC, 422-8136

5. Copying Broadcasts of Television Programs

Copyrighted television programs may be recorded from broadcasts for the purpose of classroom or homebound instruction. Recording and use should comply with the following guidelines:

- a. Television programs transmitted by television stations for reception by the general public without charge may be recorded and retained for a period not to exceed forty-five days. After forty-five days, off-air recordings must be erased or destroyed.
- b. Off-air recordings may be shown once to each class for teaching purposes and repeated once if instructional reinforcement is necessary. Use must take place during the first ten school days of the forty-five-day period.
- c. Off-air recordings may be made only at the request of individual teachers. Media Services may not record broadcasts regularly in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher.
- d. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each copy is subject to all provisions governing the original recording.
- e. After the first ten consecutive school days, off-air recordings may be used through the end of the forty-five calendar day period for teacher evaluation purposes only. A recording may not be exhibited for other purposes without authorization of the copyright owner.
- f. Off-air recordings need not be used in their entirety. However, they may not be altered from their original content nor physically or electronically combined or merged to make teaching anthologies or compilations.
- g. All copies must include the broadcast copyright notice, if any.

6. Performance or Display at a Place of Worship

It is not an infringement of copyright to perform or display a non-dramatic literary or musical work or a dramatic-musical work of a religious nature in the course of services at a place of worship or other religious assembly.

7. Music

Printed Scores and Parts

Music scores or parts protected by copyright should never be photocopied for performance (a purpose not covered under fair use) except where explicit permission is obtained from the publisher or copyright owner. Music out of print published after 1923 is still, most likely, protected by copyright. If photocopies of out-of-print music are made for a performance, the publisher must be contacted and permission requested to make any copies.

When copyrighted music is used for pedagogical reasons, such as for analysis in a classroom or to illustrate a research or performance paper, if possible, use ephemeral copies, such as overheads, computers, projectors, or direct projectors in class to present and discuss music scores. Limited photocopying of copyrighted music may be permitted for classroom or studio use when (a) the purpose is for teaching, scholarship, or research and (b) such use does not negatively impact the intended market for the printed edition. Faculty and students can themselves prepare a printed course pack anthology of music scores *with copyright permissions*—this can be done with little trouble by coordinating through the BYU Bookstore. Commercial anthologies, purchased from bookstores or publishers, are also available.

Recorded Music

In most instances, copies of commercial recordings (CDs, tapes, records, etc.) cannot be made and sold (even at cost) or given away.

Sometimes instructors or students in music, literature, history, theory, orchestration, or pedagogy courses create selected musical anthologies of recorded music by gathering recordings from a variety of commercial sources and then taping them or burning them to CDs. These anthologies may be permitted when their access is restricted to students enrolled in the class and the intent is for study purposes only. In most instances, students should access these selected musical anthologies only from the Music and Dance Media Lab-HBLLL, which should own a copy of the original, commercial recording.

Personal Use: Copying/Distribution

In order to determine what is legal and illegal regarding copying or downloading music, use this guideline: if you distribute copyrighted music without authorization from the copyright owner, you are breaking the law. Distribution can mean anything from “sharing” music files on the Internet to burning multiple copies of copyrighted music onto blank CD-Rs. If the music is protected by copyright and you don’t have the copyright holder’s permission it is illegal to upload music onto the Internet even if you don’t charge for it. However, burning a purchased copy of a CD onto a CD-R, or transferring a copy onto your computer hard drive or your portable music player, won’t usually raise concerns as long as: (1) the copy is made from an

authorized original CD that you legitimately own and (2) the copy is just for your personal use. Remember, it's never okay to sell or make commercial use of a copy that you make.

Music Licensing Organizations

A variety of national and international entities track and maintain music industry indexes. Music licensing organizations assist in acquiring permission and in locating copyright owners of musical lyrics, scores, and sound recordings. There are a wide variety of services these organizations provide, each one specializing in distinct information or licensing function. Likewise, there are several Production Music Libraries (PMLs) whose main function is to provide recorded music for use in a wide variety of applications. Performing Rights Societies license only the performance rights of any specific musical work. BYU is a licensed member of three of these organizations: ASCAP, BMI, and SESAC. As a member, BYU is allowed to perform musical works licensed by these organizations for educational settings and university sponsored activities and events without needing to seek additional permission for each performance.

The licensing of individual elements of music (lyrics, musical score, recordings, etc.) is often complex and time consuming. Contact the Copyright Licensing Office for any questions regarding the licensing of music rights.

8. Computer Programs

It is not an infringement for the owner of a computer program to make another copy or adapt the program if either of the following conditions applies:

- a. The new copy or adaptation is an essential step in the use of the computer program on a specific machine and it is used in no other manner, or
- b. The new copy or adaptation is for archival purposes, such as a back-up copy.

All archival copies must be destroyed in the event possession of the program is no longer lawful. If the original is transferred, all lawfully made copies must also be transferred.

Beyond these limited exceptions, the general rule for computer software is that copying is strictly prohibited. Under no circumstances are students, faculty, or staff permitted to copy computer programs for their own personal use, unless specifically stated otherwise in the accompanying license.

Many software companies license rather than sell software outright. Buyers of computer software must use it strictly in accordance with the license agreement. Unauthorized reproduction is illegal and unethical. A typical license provides one of the following:

- a. The software may be moved from machine to machine, but can be used only by one person at a time.
- b. The software may be used only on one designated machine.
- c. The software is sold for use on a network and only by a specified number of users.

The unauthorized networking of computer programs is prohibited. Users should consult licensing agreements prior to any duplication, alteration, or modification of computer software. The provisions of the license take precedence over any fair use copying.

9. Internet, Distributed Education, and Digital Delivery of Copyrighted Material

The Internet and other forms of digital duplication and delivery provide access to countless pieces of information, including text, graphics, sound, and video. Because this information is digital, it is easy to copy. However, the ease with which material may be copied does not diminish its protection under copyright law. Owners of copyrighted material posted on the Internet or by other digital means, enjoy the same exclusive right to copy and distribute their material as do owners of other types of copyrighted matter. Recent legislation (the “No Electronic Theft [NET] Act”) imposes criminal penalties on persons who willfully infringe copyrighted material worth at least \$1,000, even if they derive no profit from the infringement. The speed with which material may propagate over the Internet may result in considerable damages to copyright holders and corresponding liability to copyright infringers. Copyright owners may periodically search the Internet for unauthorized copies of their materials. *As with other types of copyrighted materials, individuals should always obtain permission prior to using Internet materials. Simply attributing copyrighted material to the owner is insufficient.*

Some types of information, such as e-mail messages, seem to imply the author's permission to copy simply by their context. For example, it is a common practice for E-mail recipients to append their responses to the original messages when replying to senders, thus creating and transmitting a copy of the senders' materials. While such use is common and probably not actionable under copyright law, it is less clear whether retransmission of E-mail received from another to a third party might constitute infringement. This is also true of listserv messages. Often there are instructions/policies governing the retransmission of the contents of listserves either in the introductory information when signing on the listserv or at the end of each posting. When in doubt, the best policy is to obtain permission.

When posting personal material to the Internet, give consideration to how strongly an individual wishes to assert and protect his/her copyright. Material that a person has authored or otherwise created is automatically copyrighted, even if it is not accompanied by a copyright notice; however, the chances of proving infringement and collecting damages are significantly improved by including a notice when posting material to the Internet. (For instructions regarding a proper copyright notice, see Section III, 1F of this policy.)

10. Situations NOT Covered by the Copyright Resource Material

Situations not covered by these guidelines may arise. Contact the Copyright Licensing Office if uncertainty exists about the copyright implications of your intended use of materials.

IV. INFORMATION FOR SPECIFIC AREAS

1. Packet & Copyright Clearance Center (Bookstore)

The Packet & Copyright Clearance Center is part of the BYU Bookstore Academic Publishing Services (located within the Textbook Department). It assists instructors in determining if printed materials used in educational classroom settings will require copyright permission. Permission to reprint is then requested in behalf of the University. If BYU does not already own the copyright or if articles do not require permission due to being in public domain, faculty members are required to provide any publication information to us. If article information is in question, the Packet & Copyright Clearance Center will assist in determining if the article(s) fit within the guidelines of fair use.

Once permission has been granted by any or all copyright holders, the Bookstore reprints materials in packets following any specifications for reprinting which are set forth in permission grants. Any royalty fees are passed along to students as part of the packet purchase price and are paid by us to copyright holders at the end of the semester for which permission was granted.

NOTE: Faculty who use off-campus copy facilities are held solely responsible for any copyright violations they may incur.

For more information regarding this service, contact the Bookstore's Packet & Copyright Clearance Center at (801) 422-6231 or (801) 422-5738. Campus mail should be sent to 3995 WSC. Submissions may be sent by fax at (801) 422-0070 or may be submitted online at www.bookstore.byu.edu/packets

2. Libraries

The two major libraries servicing university patrons, the Harold B. Lee library (HBLL) and the Howard W. Hunter Law Library (JRCB) have designated personnel and offices to process requests for the use of copyrighted materials by university faculty, staff, and students. The University Copyright Licensing Office is located in the HBLL and works closely with library departments such as Course Reserve, the Music Lab, the Learning Resource Center, the Digital Imaging Lab, and Interlibrary Loan to ensure uniform compliance with copyright laws, policies, and guidelines.

For more information regarding this service, contact the Harold B. Lee Library at (801) 422-2905. Campus mail should be sent to 2060 HBLL. Their website is <http://www.lib.byu.edu>, or contact the Howard W. Hunter Law Library at (801) 422-6657. Campus mail should be sent to 256b JRCB. Their website is http://law2byu.edu/Law_Library.

3. Center for Instructional Design (CID)

CID is responsible for developing instructional support resources for university courses taught on campus, online, and through independent study. The CID staff design and maintain these courses in print and web formats. Additionally, CID designs and produces media for special projects in

support of academic programs. The Copyright Licensing Office reviews and processes all copyright requests for CID.

For more information regarding this service, contact CID at (801) 422-8180. Campus mail should be sent to 3800 HBLL. Their website is <http://cid.byu.edu>.

4. CID Teaching & Learning Lab & Blackboard

The CID Teaching and Learning Lab is a free instructional media production facility for faculty and their teaching assistants. The Lab's staff advise faculty on the use of technology in the classroom and assist in the creation of instructional objects. The Lab is also the support center for Blackboard courses. All materials included in Blackboard courses, as well as copyright and licensing issues arising from activities in the Lab, are referred to the CLO.

For more information regarding this service, contact the CID Teaching and Learning Lab at (801) 422-1888. Campus mail should be sent to 3800 HBLL. Their website is <http://cid.byu.edu/imc>.

5. Print Services & Copy Centers

Personnel in the Copy Centers and Print Services deal with many copyright issues. The CLO provides training, answers questions, and works closely with these areas to ensure uniform training and compliance with copyright laws, policies, and guidelines.

For more information regarding this service call (801) 422-7440 or 422-4047. Campus mail should be sent to 204 UPB. Their website is <http://www.pmpc.byu.edu/>.

6. Independent Study (IS)

Independent Study is responsible for developing instructional support and resources for high school courses (traditional and online) taught through the Division of Continuing Education. The IS permissions coordinator works closely with the Copyright Licensing Office on major copyright licensing issues.

For more information regarding this service, contact the IS permissions coordinator at (801) 422-2592. Campus mail should be sent to 236 HCEB. Their website is <http://ce.byu.edu/is/>.

7. BYU Licensing and Trademark Office

Licensing of BYU-owned trademarks is controlled by the BYU Licensing and Trademark Office. BYU asserts ownership and all rights, title, and interest in and to its indicia, which includes trademarks, service marks, names, initials, logos, symbols, insignia, designs, seals, and mascots of the university (collectively "Trademarks").

For more information regarding this service, contact the Licensing and Trademark Office at (801) 422-1920. Campus mail should be sent to 165 ALUM. Their website is <http://identity.byu.edu>.

V. APPENDICES

APPENDIX 1

SELECTED PROVISIONS FROM THE U.S. COPYRIGHT LAW

SECTION 107. Limitations on exclusive rights: Fair use

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in 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 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 copyrighted work as a whole.
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.” (Title 17 United States Code)

SECTION 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Except as otherwise provided in this title and 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, except as provided in subsections (b) and (c), 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 (i) open to the public, or (ii) 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 that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copy-right if no

such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated 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—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(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 or 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: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such

copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) 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).

SECTION 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) 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, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a

performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution—

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent--

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;"; and

(2) by adding at the end the following:

In paragraph (2), the term `mediated instructional activities' with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation—

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made."

(c) Ephemeral Recordings.—

(1) In general.--Section 112 of title 17, United States Code, is amended—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

(f)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted

in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and

(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).

(2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if—

(A) no digital version of the work is available to the institution; or

(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2)."

(2) Technical and conforming amendment.--Section 802(c) of title 17, United States Code, is amended in the third sentence by striking ``section 112(f)" and inserting ``section 112(g)".

(d) Patent and Trademark Office Report.—

(1) In general.--Not later than 180 days after the date of enactment of this Act and after a period for Public comment, the Undersecretary of Commerce for Intellectual Property, after Consultation with the Register of Copyrights, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process. The report submitted to the Committees shall not include any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report.

(2) Limitations.--The report under this subsection—

(A) is intended solely to provide information to Congress; and

(B) shall not be construed to affect in any way, either directly or by implication, any provision of title 17, United States Code, including the

requirements of clause (ii) of section 110(2)(D) of that title (as added by this subtitle), or the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution.

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions;

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

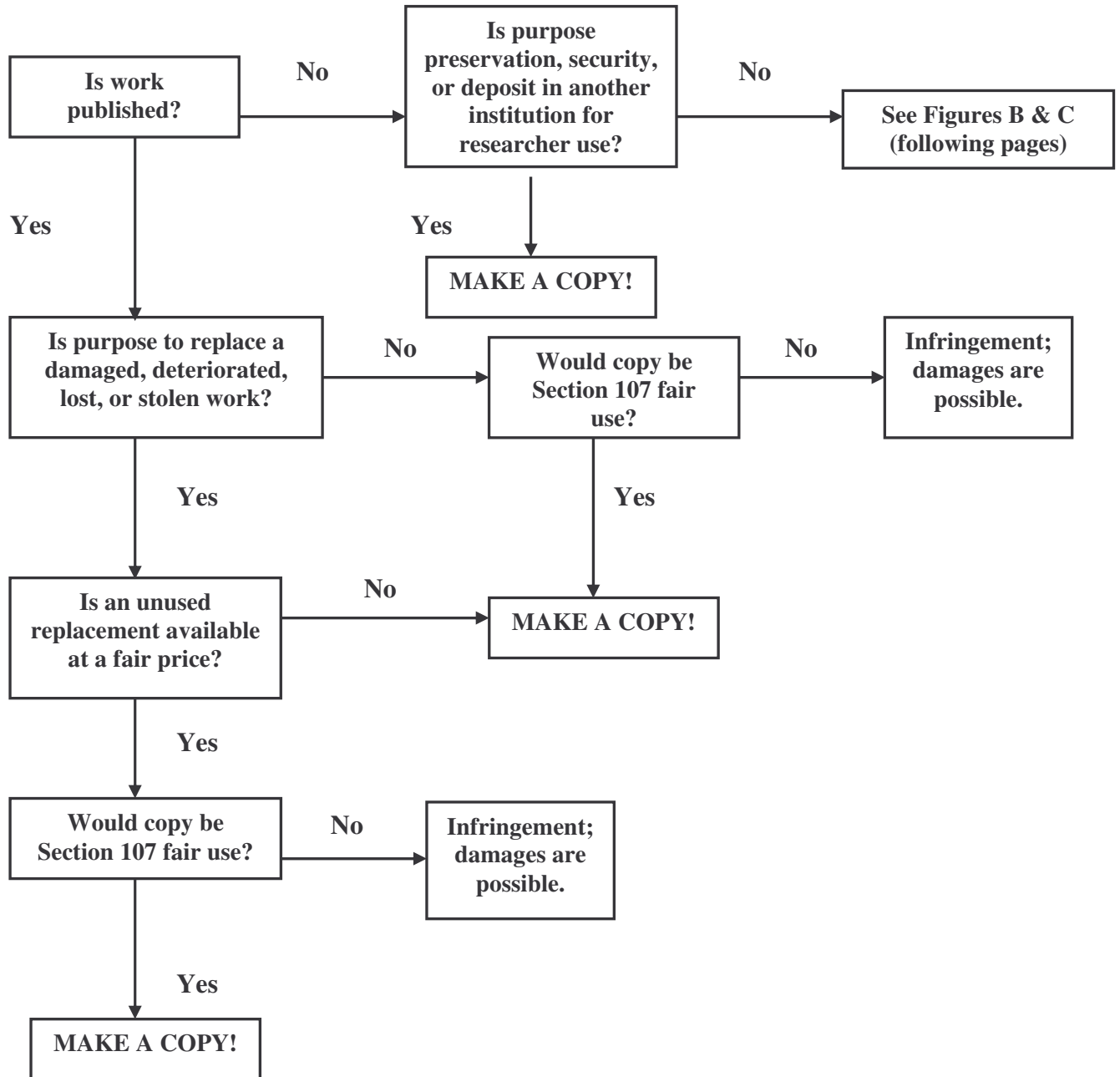
(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

APPENDIX 2

COPYING DECISION FLOWCHARTS

***FIGURE A: INSTITUTION REQUESTS COPY OF COPYRIGHTED ITEM**



*Figures A, B, and C—Archive & Manuscripts: Law, Gary M. Peterson and Trudy Huskamp Peterson, Society of American Archivists, 1985.

FIGURE B: USER REQUESTS COPY OF COPYRIGHTED ITEM AND WANTS TO MAKE COPY HIMSELF/HERSELF

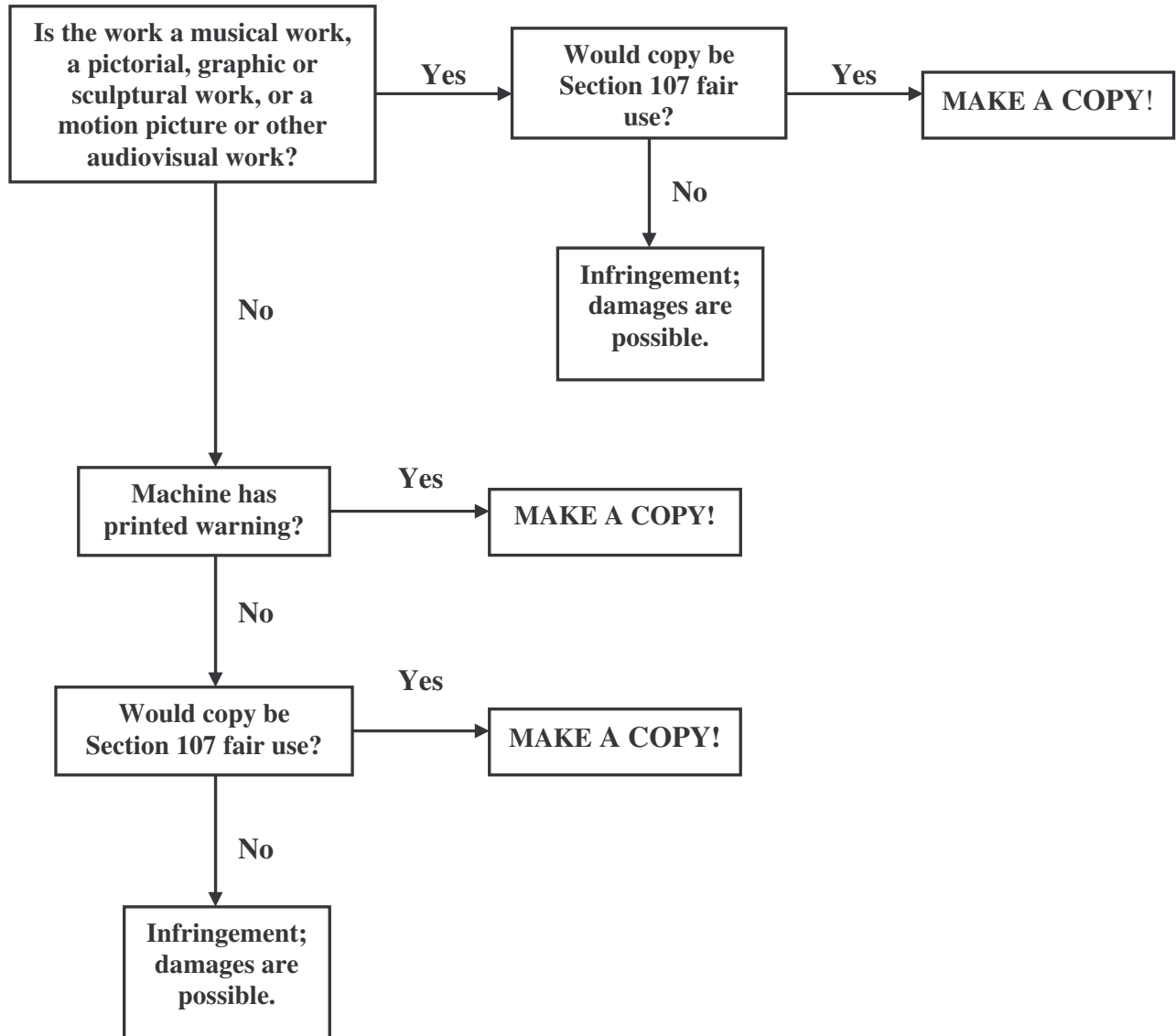
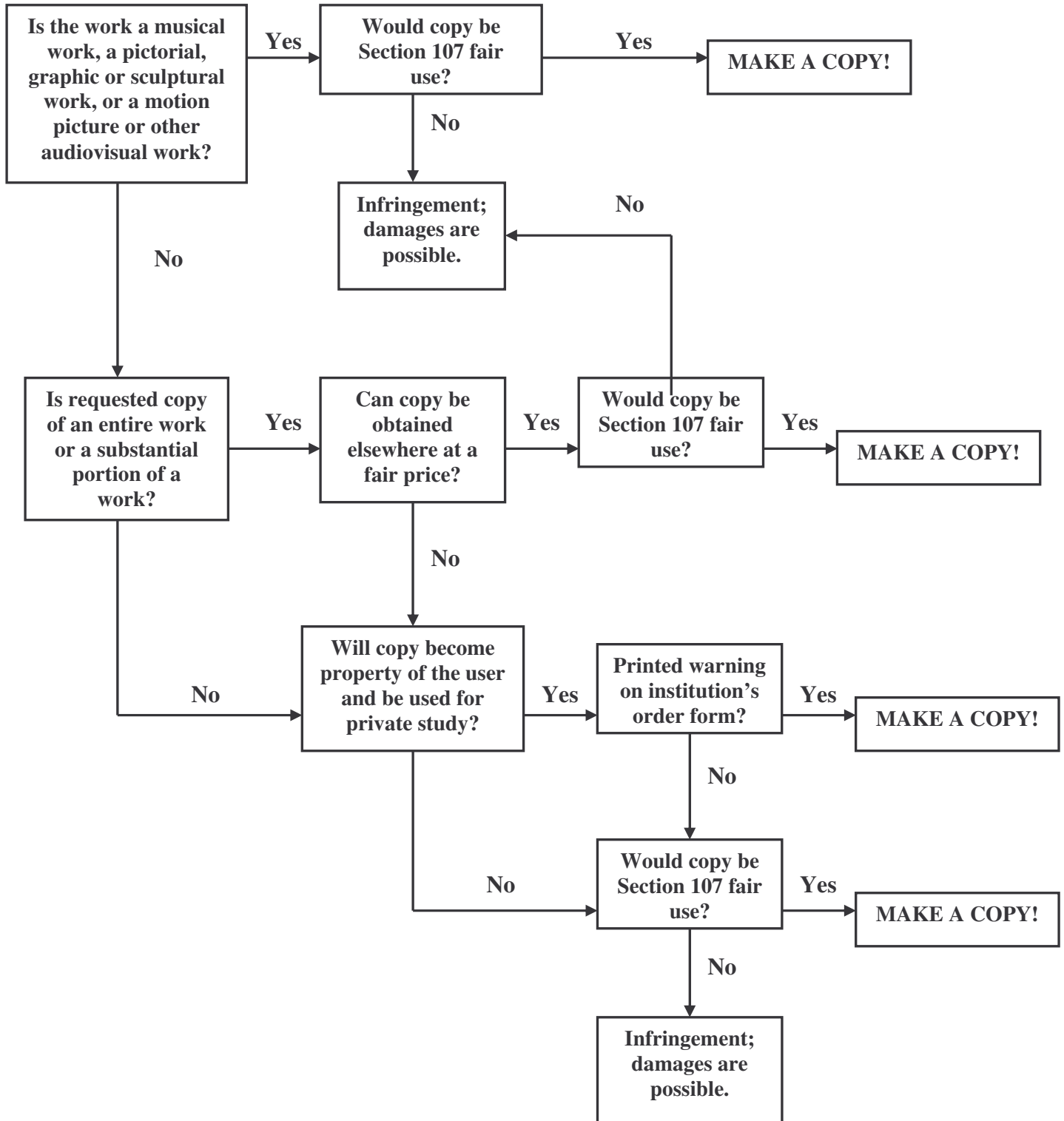


FIGURE C: USER REQUESTS COPY OF COYRIGHTED ITEM AND WANTS INSTITUTION TO MAKE COPY



APPENDIX 3

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS

With Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum standards of educational free use under §107 of H.R. 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 §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.

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:

- 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.

III. Definitions

A. 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, and 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 for poetry and prose 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 2 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.

B. 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.

C. 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 brevity and cumulative effect above, shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

IV. Prohibitions as to I and II above

Notwithstanding any of the above, 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:
 1. Substitute for the purchase of books, publishers' reprints or periodicals;
 2. Be directed by higher authority;
 3. 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.

Agreed March 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America:

By IRWIN KARP, Counsel.

Association of American Publishers, Inc.:

By ALEXANDER C. HOFFMAN, Chairman, Copyright Committee.

APPENDIX 4*

FAIR USE GUIDELINES FOR EDUCATIONAL MULTIMEDIA

*While many universities adhere to the CONFU Guidelines, Brigham Young University has chosen not to adopt them as standards for the campus community. They are provided here for information and reference purposes.

1. INTRODUCTION

1.1 Preamble

Fair use is a legal principle that provides certain limitations on the exclusive rights of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than seeking permission.

There is no simple test to determine what is fair use. Section 107 of the Copyright Act sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a “fair use”:

- (1) the purpose and character of 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 copyrighted work as a whole, and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the participants’ consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use. The more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain -- such as US Government works or works on which copyright has expired for which there are no copyright restrictions -- or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

1.2 Background

These guidelines clarify the application of fair use of copyrighted works as teaching methods are adapted to new learning environments. Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities. Educators and students want guidance about the application of fair use principles when creating their own multimedia projects to meet specific instructional objectives.

1.3 Applicability of These Guidelines

These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects, which are created, by educators or students as part of a systematic learning activity by nonprofit educational institutions. Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. Educational institutions are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of these guidelines, educators include faculty, teachers, instructors and others who engage in scholarly research and instructional activities for educational institutions. The copyrighted works used under these guidelines are lawfully acquired if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for educational purposes in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under Section 3. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines such as those for off-air taping may be relevant.

2. PREPARATION OF EDUCATIONAL MULTIMEDIA PROJECTS USING PORTIONS OF COPYRIGHTED WORKS

These uses are subject to the Portion Limitations listed in Section 4. They should include proper attribution and citation as defined in Sections 6.2.

2.1 By Students:

Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

2.2 By Educators for Curriculum-Based Instruction:

Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

3. PERMITTED USES OF EDUCATIONAL MULTIMEDIA PROJECTS CREATED UNDER THESE GUIDELINES

Uses of educational multimedia projects created under these guidelines are subject to the Time, Portion, Copying and Distribution Limitations listed in Section 4.

3.1 Student Use:

Students may perform and display their own educational multimedia projects created under Section 2 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews.

3.2 Educator Use for Curriculum-Based Instruction:

Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:

3.2.1 for face-to-face instruction,

3.2.2 assigned to students for directed self-study,

3.2.3 for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN) and provided further that the technology or other means are in place to prevent the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course.

Students shall be advised that they are not permitted to make their own copies of the educational multimedia project.

3.3 Educator Use for Peer Conferences:

Educators may perform or display their own educational multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.

3.4 Educator Use for Professional Portfolio

Educators may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses such as tenure review or job interviews.

4. LIMITATIONS - TIME, PORTION, COPYING AND DISTRIBUTION

The preparation of educational multimedia projects incorporating copyrighted works under Section 2, and the use of such projects under Section 3, are subject to the limitations noted below.

4.1 Time Limitations

Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in Section 3.1.

4.2 Portion Limitations

Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. In the aggregate means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under Sections 3.1 and 4.3 should comply with the portion limitations in this section.

4.2.1 Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines.

4.2.2 Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

4.2.3 Music, Lyrics, and Music Video

Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Section 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

4.2.4 Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2.

4.2.5 Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

4.3 Copying and Distribution Limitations

Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted by Section 3, there may be no more than two use copies only one of which may be placed on reserve as described in Section 3.2.3.

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3.3 and 3.4 for educators and in Section 3.1 for students.

5. EXAMPLES OF WHEN PERMISSION IS REQUIRED

5.1 Using Multimedia Projects for Non-Educational or Commercial Purposes Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

5.2 Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed in Section 4.3.

5.3 Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in Section 3.2.3, without obtaining permissions for all copyrighted works incorporated in the program.

6. IMPORTANT REMINDERS

6.1 Caution in Downloading Material from the Internet

Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

6.2 Attributions and Acknowledgement

Educators and students are reminded to credit the sources and display the copyright notice © and copyright ownership information if this is shown in the original source, for all works incorporated as part of educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses described in Section 3.2.3. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

6.3 Notice of Use Restrictions

Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.

6.4 Future Uses Beyond Fair Use

Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

6.5 Integrity of Copyrighted Works: Alterations

Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

6.6 Reproduction or Decompilation of Copyrighted Computer Programs

Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

6.7 Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

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