

PHOTOCOPYING OF COPYRIGHTED MATERIALS FOR CLASSROOM USE

The subject of photocopying for classroom purposes is of significant concern. Specific issues include when photocopying may be done without the consent of the copyright owner; when and how permission to photocopy should be obtained; how exposure to liability may be reduced; and under what circumstances the district will defend employees against claims of copyright infringement arising out of photocopying for classroom use. To assist employees in resolving these issues and to facilitate compliance with the copyright laws, the Board of Education adheres to the following:

- A. The principles of the copyright law are designed to promote the creation, publication and use of works of the intellect. These principles include both the exclusive rights of the copyright owners to determine certain uses of their works (in not-for-profit as well as commercial contexts), and certain exceptions including the doctrine of "fair-use." These precepts are in the mutual interest of the school district, author, publisher and the public.
- B. Under the copyright laws, certain photocopying of copyrighted works for educational purposes may take place without the permission of the copyright owner under the doctrine of "fair-use" (presently set forth in Section 107 of the Federal Copyright Act.) this principle is subject to limitations, but neither the statute nor judicial decisions give specific practical guidance on what photocopying falls within fair use. To achieve for staff greater certainty of procedure, to reduce risks of infringement or allegations thereof, and to maintain a desirable flexibility to accommodate specific needs, this policy has been adopted by the Board of Education. If employees experience any problems or have suggestions, they are asked to communicate them to the superintendent of schools.
 - 1. The guidelines set forth in Appendix I are to be used by staff members to determine whether or not the prior permission of the copyright owner is to be sought for photocopying for classroom use.

If the proposed photocopying is not permitted under the guidelines in Appendix I, permission to copy is to be sought. An explanation of how permissions may be sought and a procedure for furnishing to the administration information concerning the responses by copyright owners to requests for permission is set forth in Appendix II. After permission has been sought, copying should be undertaken only if permission has been granted, and in accordance with the terms of the permission, except as provided in the next paragraph.

**Photocopying of Copyrighted Materials
For Classroom Use (Continued)**

2. The doctrine of "fair use" permits specific photocopying in certain situations, within limitations, beyond those specified in the guidelines or those that might be agreed to by the copyright owner. In order to preserve the ability of individual staff members to utilize the doctrine of fair use in appropriate circumstances without incurring the risk of having personally to defend an action by a copyright owner who may disagree as to the limits of fair use, a staff member who has sought permission to photocopy and has not received such permission (or has received permission contingent upon conditions that the staff member considers inappropriate) may request a review of the matter by the superintendent of schools.

If upon review, the superintendent of schools determines that some or all of the proposed photocopying is permitted by the copyright law, the superintendent of schools will so advise the staff member. In that event, should any such photocopying by the staff member thereafter give rise to a claim of copyright infringement, the district will defend and indemnify the staff member against any such claim.

3. In the absence of the termination and advice by the superintendent of schools referred to in Paragraph B, or in the event that permission has not been requested by the staff member as provided in Paragraph A, no defense or indemnification by the district will be provided to a staff member whose photocopying gives rise to a claim of copyright infringement.
4. Materials to be photocopied are to be sent to the machine operator with a header sheet containing certification that the materials comply with the Board of Education policy or that the publisher has given permission in accordance with Board of Education policy requirements. (See Appendix III.)

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APPENDIX I**GUIDELINES**

The guidelines contained in this Appendix were negotiated by schools, authors and publishing representatives in 1976 and were incorporated in the House of Representatives' report accompanying the Copyright Act of 1976. The introductory explanation of the guidelines in the House Report describes their relationship to the doctrine of fair use as follows:

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 fair use under Section 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 state in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at the teacher's individual request for the teacher's scholarly research or use in teaching or preparation to teach 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.

Appendix I (Continued)
Guidelines (Continued)

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 test 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.

Definitions

Brevity

- (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in "i" and "ii" may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

- (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- (iv) "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 "ii" above notwithstanding, such "special works" may not be reproduced in their entirety; however, an

Appendix I (Continued)
Guidelines (Continued)
II. Multiple Copies of Classroom Use (Continued)
C. (iv) (Continued)

excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teachers, and
- (ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- (i) The copying of the material is for only one course in the school in which the copies are made.
- (ii) 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.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

III. 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

Appendix I (Continued)**Guidelines (Continued)****III. Prohibitions as to I and II Above (Continued)****A. (Continued)**

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:
 - (i) Substitute for the purchase of books, publishers' reprints or periodicals; (b) be directed by higher authority; (c) be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed:

March 19, 1976

Ad Hoc Committee on Copyright Law Revision:

By Sheldon Elliot 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 II

PERMISSIONS

A. How to Obtain Permission

When a proposed use of photocopied material requires a staff member to request permission, communication of complete and accurate information to the copyright owner will facilitate the request. The Association of American Publishers suggests that the following information be included to expedite the process.

1. Title, author and/or editor and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photocopy, offset, typeset).

The request should be sent*, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be obtained from The Literary Marketplace (for books) or Ulrich's International Periodicals (for journals), both published by the R.R. Bowker Company. For purposes of proof and to define the scope of the permission, it is important that the permission be in writing.

The process of considering permission requests requires time for the publisher to check the status and ownership of rights and related matters and to evaluate the request.

- * Copy of sample letter is attached to these guidelines.

Appendix II (Continued)**Permissions (Continued)****A. How to Obtain Permission (Continued)**

It is advisable, therefore, to allow sufficient lead time. In some instances the publisher may assess a fee for permission, which may be passed on to students who receive copies of the photocopied material.

B. Gathering Data on Responses to Requests for Permission to Photocopy

In order to help assess the effect of this policy statement upon the staff, it will be useful for the administration to compile data on responses to copyright owners. Each member of the staff is therefore requested to forward a dated copy of each request for permission and a dated copy of each response to the superintendent of schools.

The following is a sample letter to a copyright owner (usually a publisher) requesting permission to copy:

Material Permissions Department
Hypothetical Book Company
500 East Avenue
Chicago, IL 60601

Dear Sir/Madam:

I request permission to copy the following for use in my class next semester:

Title: Knowledge of Good, Second Edition
Copyright: Hypothetical Book Co., 1965, 1971
Author: Frances Jones

Material to be duplicated: Chapter 10 (photocopy enclosed)

Number of copies: 50

Distribution: The material will be distributed to students in my class and they will pay only the cost of the photocopying.

Type of reprint: Photocopy

Use: The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience when replying to this request.

Sincerely,

Staff Member

APPENDIX III

I certify that this request complies with Board of Education policy regarding copyright guidelines.

Signature

This request requires the written permission of the publisher. I certify that the attached copy of authorization is in compliance with Board of Education policy regarding copyright guidelines.

Signature

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