COPYRIGHT POLICY

And

FACULTY COPYRIGHT MANUAL

The Westminster Schools
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THE WESTMINSTER SCHOOLS COPYRIGHT POLICY

The Westminster Schools
1424 West Paces Ferry Road, NW
Atlanta, Georgia 30327

This Copyright Policy states The Westminster Schools’ intention to observe the copyright law and establish procedures for managing copyright compliance. Copyright lawsuits do occur, and they are occurring more frequently. When they do occur, the institution, Board of Trustees and key administrators are often named in the suit along with the offending party.

Failure to adopt and support a copyright policy would place The Westminster Schools in jeopardy because of the illegal actions of one employee. The intent of this Copyright Policy is to place the burden of litigation where it belongs—on the individual(s) responsible for any illegal actions.

It is the intent of The Westminster Schools that all employees of The Westminster Schools comply with the U.S. Copyright Law (17 U.S.C. §§101 et seq.). This Copyright Policy represents a sincere effort to observe the copyright law.

Employees are prohibited from copying a copyrighted work unless the action is authorized by (a) a specific exemption in the copyright law, including the educational fair use guidelines specifically described in the Faculty Copyright Manual, or (b) a license or other written permission from the copyright owner. Any other copying must be approved by the institution’s Copyright Officer on a case-by-case basis.

Employees are prohibited from “performing” copyrighted works unless the performance is authorized by: (a) 17 U.S.C. § 110(1), (2), (4), (8) or (9); (b) performance licenses; (c) purchase order authorization; or (d) another form of written permission from the copyright owner or the owner’s agent.

The President of the school shall appoint a Copyright Officer who shall (a) implement this Copyright Policy, (b) prepare and distribute a Faculty Copyright Manual, (c) establish and implement procedures to assure that the institution and its employees are in compliance with the copyright law, (d) conduct training programs to assure that employees are aware of the copyright law and the school’s copyright policy to enable these employees to perform their duties within the intent of the law and the policy, (e) answer questions about the copyright law, (f) maintain appropriate records of permissions, agreements, and licenses, (g) place appropriate copyright warning notices on or near copying equipment, and (h) perform other related duties, as needed.

Employees who willfully disregard The Westminster Schools Copyright Policy, or the provisions of the Faculty Copyright Manual, do so at their own risk and assume all liability, including the possibility of dismissal for persistent copyright infringements.

THE WESTMINISTER SCHOOLS COPYRIGHT POLICY
If the Copyright Officer is aware of copyright infringements by an employee, the Copyright Officer shall counsel the infringer. If the employee continues to infringe the copyright law, the Copyright Officer shall inform the President of the continuing infringements. The President shall take appropriate steps to stop the illegal actions. If the infringer refuses to stop committing the infringements, the President shall take appropriate steps to terminate the employment of the persistent infringer.

*Adopted by*

The Board of Trustees  
The Westminster Schools, Inc.  
1424 West Paces Ferry Road, NW  
Atlanta, GA 30327

*Current as of January 1, 2008*
This Faculty Copyright Manual is a brief condensation of United States copyright law and related legal documents. It does not encompass the totality of United States copyright law but does provide a summary of the points most likely to affect the faculty.

CHAPTER 1

Overview

The United States Copyright Act, 17 U.S.C. §§ 101 et. seq. (the “Copyright Act”), and judicial decisions interpreting the Copyright Act, establish and define copyright protection in the United States.

What Can Be Copyrighted:

Copyright protection exists for an original work fixed in a tangible medium of expression from which it can be perceived or otherwise communicated (either with or without the aid of a machine).¹ Works eligible for copyright protection include:

1. Literary works;

2. Sheet music and musical performances;

3. Dramatic works, including any accompanying music;

4. Pantomimes and choreographic works;

5. Pictorial, graphic and sculpture works;

6. Motion pictures and other audiovisual works; and

7. Sound recordings.²

Exclusive Rights:

The copyright law gives the copyright owner the exclusive right to do or to authorize the following in regard to a copyrighted work (in principal part):

1. To reproduce the copyrighted work. The copyright owner has the exclusive right to prepare copies of a copyrighted work.

THE WESTMINSTER SCHOOLS FACULTY COPYRIGHT MANUAL
2. To prepare derivative works based upon the copyrighted work. Only the copyright owner may change, alter, or translate a work, convert the work into a new medium or create a new work based upon the work.

3. To distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. For most types of works, this exclusive right of “first publication” terminates with the “publication” of the work. Thereafter, the purchaser of a legitimate copy of a work (excluding computer software and sound recordings) may sell, lend or dispose of that copy without the copyright owner’s permission.

4. In the case of literary, musical, dramatic and choreographic works, pantomimes, and motion pictures ... [and] other audiovisual works, the copyright owner has an exclusive right to “perform” (i.e., show) the copyrighted work publicly; and

5. In the case of literary, musical, dramatic and choreographic works, pantomimes and pictorial, graphic, or sculptural works, including individual images of a motion picture or other audiovisual work, the copyright owner has an exclusive right to display the copyrighted work publicly.³

Copyright Registration and Notice:

An original work is automatically protected by copyright the moment it is created in a tangible medium of expression. However, the copyright in a work cannot be enforced (specifically, a lawsuit regarding copyright infringement may not be brought) until the work is registered with the U.S. Copyright Office.

To register a work with the Copyright Office, the copyright owner must submit to the Copyright Office two copies of the work, a registration form and the $45 filing fee. If copyright registration is made before or within five years after the first publication of the work, such a registration is prima facie evidence of the validity of the copyright. If more than five copies of the work have been published, the owner of the copyright shall deposit the following materials with the Copyright Office within three months after the date of such publication: (i) two copies of the best edition or (ii) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords. If the owner of a published work does not submit the required deposit within three months after the publication date, the Copyright Office may issue a fine.

A notice of copyright ownership (e.g., © The Westminster Schools 2007) is not required on works published after March 1, 1989⁴. (By contrast, under prior versions of the Copyright Act, including a copyright ownership notice on a work was a prerequisite to the work being eligible for copyright protection.) It is, however, advisable for authors (that is, writers, artists, etc.) to place a copyright ownership notice on all works they create, and to register their copyrights promptly. Including a notice of copyright
ownership on a work, and registering the copyright in the work, helps to put others on notice of the author’s copyright rights and to establish a public record of ownership.

**Duration of Copyright:**

**Works Copyrighted After January 1, 1978**

For works that were copyrighted on and after January 1, 1978, the Copyright Act establishes a single copyright term and different methods for computing the duration of a copyright. Works of this sort fall into two categories:

**Works Originally Created After January 1, 1978**

For works created after January 1, 1978, the Copyright Act adopts the basic “life-plus-seventy” system in place in most other countries. A work that is created (fixed in tangible form for the first time) after January 1, 1978, is automatically protected from the moment of its creation and is given a term lasting for the author’s life, plus an additional seventy years after the author’s death. In the case of a joint work prepared by two or more authors who did not work for hire, the copyright term lasts for seventy years after the last surviving author’s death. For works made for hire, and for anonymous and pseudonymous works (unless the author’s identity is revealed in Copyright Office records), the duration of copyright will be ninety-five years from first publication or one hundred and twenty years from creation, whichever is shorter.

**Works In Existence But Not Published Or Copyrighted as of January 1, 1978**

Works that had been created before January 1, 1978 but that had neither been published nor registered for copyright before January 1, 1978 are automatically given federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for new works. The duration of copyright in a work with a single author will last for the author’s life, plus an additional seventy years after the author’s death. In the case of works for hire that were not published or copyrighted before January 1, 1978, the term seventy years after the last surviving author’s death. In the case of anonymous and pseudonymous works that were not published or copyrighted before January 1, 1978, the duration of the copyright term will be one hundred and twenty years from the date of creation. The law specifies that in no case did a copyright in a work of this sort expire before December 31, 2002, and if the work was published before that date, the term will extend another forty-five years, through the end of 2047.

**Works Already Under Statutory Protection Before 1978**

Under the federal copyright law in effect prior to the enactment of the current Copyright Act (i.e., prior to January 1, 1978), copyright was secured either (a) on the date a work was published with the appropriate copyright notice or, (b) on the date of
registration if the work was registered in unpublished form. Under the prior federal
copyright statute, a copyright secured before January 1, 1978 lasted for a first term of
twenty-eight years from the date it was secured. Such a copyright was eligible for
renewal during the last (28th) year of the first term. If renewed, the copyright was
extended for a second term of twenty-eight years. If not renewed, the copyright expired
at the end of the first twenty-eight year term.

The old system of computing the duration of protection was carried over into the
current Copyright Act with one major change: the length of the second term is increased
to sixty-seven years. Thus, the maximum total term of copyright protection for works
protected by the prior federal statute as of January 1, 1978 is increased under the current
Copyright Act from fifty-six years (a first term of twenty-eight years plus a renewal term
of twenty-eight years) to ninety-five years (a first term of twenty-eight years plus a
renewal term of sixty-seven years).

The specific situation for works copyrighted before 1978 depends on whether the
copyright had already been renewed on or before December 31, 1977. Works originally
copyrighted before 1950 and renewed for a second term before 1978 have automatically
been given a longer copyright term. Such copyrights have been automatically extended
to last for a total term of ninety-five years (a first term of twenty-eight years plus a
renewal term of sixty-seven years) from the end of the year in which they were originally
secured. It is important to note that this extension applies not only to copyrights less than
fifty-six years old but also to older copyrights that had previously been extended in
duration under a series of Congressional enactments beginning in 1962. As in the case of
all other copyrights subsisting in their second term between December 31, 1976, and
December 31, 1977, these copyrights will expire at the end of the calendar year in which
the ninety-fifth anniversary of the original date of copyright occurs.

A special transitional situation arose with respect to first-term copyrights that
were originally secured in 1950 and that became eligible for renewal during the calendar
year 1977. If renewal registration was made before January 1, 1978, the duration of the
copyright was extended to the full period of seventy-five years without the need for
further renewal. However, even if renewal registration was not made before January 1,
1978, renewal for the second forty-seven year term could be made under the 1976 law at

For works originally copyrighted between January 1, 1950, and December 31,
1963, copyrights in their first twenty-eight year term on January 1, 1978 still had to be
renewed in order to be protected for the second term. If a valid renewal registration was
made at the proper time, the second term will last for sixty-seven years. However, if
renewal registration for these works was not made within the statutory time limits, a
copyright originally secured between 1950 and 1963 expired on December 31st of its
twenty-eighth year, and protection was lost permanently.
For works originally copyrighted between January 1, 1964, and December 31, 1977, the amendment to the copyright law enacted June 26, 1992 makes renewal registration optional. The copyright is still divided between a twenty-eight year original term and a sixty-seven year renewal term, but a renewal registration is not required to secure the renewal copyright. The renewal vests on behalf of the appropriate renewal claimant upon registration or, if there is no renewal registration, on December 31st of the twenty-eighth year.

<table>
<thead>
<tr>
<th>Date and Nature of Work</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published before 1923</td>
<td>The work is in the public domain</td>
</tr>
<tr>
<td>Published 1923-1963 and never renewed</td>
<td>The work is in the public domain</td>
</tr>
<tr>
<td>Published 1923-1963 and timely renewed (28th year after publication)</td>
<td>95 years from the date of first publication</td>
</tr>
<tr>
<td>Published from 1964-1977</td>
<td>95 years from the date of publication (renewal term automatic)</td>
</tr>
<tr>
<td>Created 1978 or later (whether or not published)</td>
<td>Single term of life plus 70 years (but if work is made for hire or anonymous or pseudonymous, 95 years from the date of publication or 120 years from date of creation, which ever ends first)</td>
</tr>
<tr>
<td>Created, but not published or registered, before 1978</td>
<td>Single term of at least life plus 70 years, but cannot expire before Dec. 31, 2002 (if work remains unpublished) or Dec. 31, 2047 (if work is published before Dec. 31, 2002)</td>
</tr>
</tbody>
</table>

**Using Works With Expired Copyrights**

The important point to keep in mind regarding the duration of a work’s copyright is that once a work falls into the public domain (i.e., once the work’s copyright expires), the work cannot be protected under the Copyright Act. That is, the Copyright Act provides no procedure for restoring protection for works in which copyright has been lost for any reason. Therefore, if one can confirm that a work’s copyright has expired, he or she should feel fairly confident that the work may be used without incurring a significant risk of violating United States copyright laws.

**Exceptions to copyright exclusivity:**

**Performing Rights:**

One of the exclusive rights given to the copyright holder is the right to control performances of a copyrighted work. This includes the right to control the showing of an
audiovisual work. Section 110(1) of the Copyright Act provides a limited exemption to that right. Teachers and pupils may perform (show) copyrighted works in the classroom. The exception requires that the performance be carried out by instructors or students in a nonprofit institution in a classroom or similar place of instruction (e.g., laboratory, auditorium, gymnasium, or library). The exemption only applies to performances in face-to-face instruction in a course given for academic credit. It does not cover performances for entertainment or recreational purposes (e.g., performances conducted as a part of lunch hour or recess). It also does not authorize performing works in common rooms of student housing. Performance licenses are required to perform audiovisual works in those circumstances or locations. In addition, performing dramatic works requires an appropriate license from the playwright or other author of a dramatic work.

**Distance Education Under the Teach Act:**

Section 110(2) of the Copyright Act (commonly known as the “Teach Act”) expressly permits certain distance education activities, thereby exempting those activities from copyright infringement liability. Specifically, subject to the requirements discussed below, the transmission of a performance or display of certain works is not copyright infringement if 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 mediated instructional activities of a governmental body or an accredited nonprofit educational institution.

**Applicable Works.** The Teach Act’s exemption applies to performances of non-dramatic literary works, non-dramatic musical works and reasonable portions of other works, as well as displays of copyrighted works in an amount comparable to that typically displayed in a live classroom setting. *But, the Teach Act’s exemption does not apply to (a) works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks, or (b) works or copies of works that are known (or reasonably should be known) not to have been lawfully made or acquired.*

**Requirements.** The following conditions must be met for the Teach Act to apply to a particular transmission by an educational institution:

- The performance or display that is transmitted must be directly related and of material assistance to the teaching content of the transmission.

- The transmission must be made solely for, and, to the extent technologically feasible, the reception of such transmission must be limited to, students officially enrolled in the course for which the transmission is made.

- The educational institution making the transmission must (a) institute a copyright policy, (b) provide accurate informational materials to faculty, students and relevant staff that promotes compliance with copyright law, and
(c) provide notice to students that materials used in connection with the course may be subject to copyright protection.

- For digital transmissions, the educational institution must employ technological measures that reasonably prevent (a) retention in accessible form for longer than a class session, and (b) recipients of the transmission from making an unauthorized further dissemination of the transmission in accessible form to others. Also, the educational institution must not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or unauthorized further dissemination of the transmission.

**Fair Use:**

Introduction to Fair Use. While the Copyright Act gives authors the aforementioned exclusive rights in and to their works, the law also creates some limits on those rights. The doctrine of “fair use” is one such limit. According to the Copyright Act, the “fair use” of a copyrighted work is not actionable copyright infringement.\(^5\) In determining whether a use of a copyrighted work amounts to a fair use permitted under the Copyright Act, courts consider the following four factors:

1. **The purpose and character of the use, including whether it is for commercial or nonprofit educational purposes.**

   Under the first fair use factor, courts focus on the purpose and character of an allegedly infringing use. In determining the purpose and character of a use, two key factors are (1) whether the use is commercial or is for a nonprofit educational purpose, and (2) whether the use is transformative. For a new use to be deemed transformative, the new use must typically serve a purpose that is different from the purpose of the original work. In regard to the commercial or nonprofit nature of a use, it is important to note that a use may be deemed to be commercial even if the user will not receive direct revenue from the use. As one court has stated, the key question in determining whether a use is commercial is not “whether the sole motive of the use is monetary gain but whether the user stands to profit from exploitation of the copyrighted material without paying the customary price.”\(^6\)

2. **The nature of the copyrighted work.**

   Under the second fair use factor, more creative works are afforded greater protection from copying than are less creative (more informational) works. As such, the use of an underlying work that is factual in nature is much more likely to be a fair use than is the use of an underlying work that is fictional in nature. For example, copying a recitation of factual events would be much more likely to be
considered a fair use than would be copying of a fictional novel, although, in either case, the other fair use factors would have to be analyzed to determine whether the defense could be established.

3. *The amount and substantiality of the portion used in relation to the work as a whole.*

Under the third fair use factor, a court will consider the extent of the defendant’s copying. A court’s consideration of this factor may incorporate both a qualitative and quantitative assessment of the use in question. As an initial matter, it is important to note that using copyrighted material without the owner’s consent that extensively copies or paraphrases the original is generally not considered a fair use. Unauthorized use of even a small amount of a work might not be a fair use if the part of the work that is used comprises the “heart” of the work. 

Copying up to ten percent of a work is usually considered safe, except when the parts copied are crucial to the whole material, or if they are rare or difficult to create.

4. *The effect of the use on the potential market for or value of the work.*

Under the fourth fair use factor, a court examines the effect of the use on the market for the original work. The Supreme Court has asserted that the fourth fair use factor “is the ‘most important, and indeed, central fair use factor.’ Along these lines, the Supreme Court has stated that the appropriate question is if the use were to become widespread, would it adversely affect the potential market for the copyrighted work? This impact can be measured by competing versus non-competing uses.

**Competing Uses.**

As a general matter, a use that deprives a copyright owner (e.g., author, publisher, etc.) of a sale, lease or rental likely will not amount to a fair use. (This includes duplicating print, audio, and video materials instead of purchasing, renting, leasing, or licensing additional copies.)

**Non-competing Uses.**

Non-competing uses do not adversely affect the copyright owner. For example, making two slides from a magazine for classroom use when the slides are not commercially available, or duplicating materials which are not available for sale, rental, lease or licensing, etc., may not affect the copyright owner. Non-competing uses are more likely to qualify as fair use under the Copyright Act, but repeated copying may nonetheless still be deemed illegal.
Educational Fair-Use Guidelines.

As noted, the four fair use factors described above are to be considered by a court in determining whether a particular use is a fair use under the Copyright Act. However, a correct application of those factors often entails a detailed legal analysis. In preparing for the 1976 enactment of the current Copyright Act, Congress therefore sought to reach a consensus regarding what would constitute permissible fair use for educational purposes. Several ad hoc committees were convened, representing educators, authors, publishers, studios, and labor unions, and these committees were asked to develop educational fair use guidelines for: (1) printed works, (2) music, and (3) audiovisual material. Reports of guidelines for printed works and music were received in time to be incorporated into the legislative record attached to the Copyright Act; the third set of guidelines, agreed to later, was entered into the Congressional Record dated as of October 14, 1981. Additionally, fair use guidelines related to the use of computer software have been incorporated into the Copyright Act via subsequent Congressional amendments to the law as originally enacted in 1976.

The four sets of fair use guidelines are reflected in this manual in several places, especially as follows: printed material, pp. 14-19; music, pp. 19-21; audiovisual material, pp. 21-24; and computer software, pp. 24-26.

While the educational fair use guidelines related to printed works, music and audiovisual material were not included within the text of the Copyright Act, they have been ratified by Congress as an expression of the “intent” of the legislature, and are therefore considered strongly persuasive authority by courts adjudicating copyright cases. As the fair use guidelines related to computer software were adopted via congressional amendment, those guidelines are now a part of the Copyright Act and have the force of law.

In adopting the fair use guidelines described in this manual, Congress did not intend to set forth an exclusive list of uses that qualify as fair uses under the Copyright Act. Depending on the application of the above described fair use factors, uses not described in the fair use guidelines may qualify as permissible fair uses under the Copyright Act. However, the fair use guidelines are intended to provide clarity by “calling out” certain uses that are presumptively fair.

It is Westminster’s policy to take advantage of the clarity offered by the fair use guidelines. Therefore, Westminster employees are to adhere to the fair use guidelines described in this manual. If a Westminster employee desires to use a work in a manner that exceeds the fair use guidelines set forth in this manual, such use must be cleared in advance by the school’s Copyright Officer.

Copyright Warning Notices:
The Copyright Act specifies that copyright warning notices shall be (a) posted at the place where certain library or archives employees accept orders for copies, and (b) included on any printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords. The text of the required notice is specified by federal regulation, and is as follows.\textsuperscript{11}

\textbf{NOTICE}

\textit{Warning concerning copyright restrictions. The copyright law of The United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.}

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of the law.

A conspicuous warning notice should also be displayed near any unstaffed copying equipment used by faculty, other employees or students. The following notice was recommended by the American Library Association shortly after adoption of the Copyright Act.\textsuperscript{12}

\textbf{NOTICE: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.}

Libraries and archives also are required to place a copyright warning notice on the first page of copies they make for patrons. The following notice was recommended by the American Library Association shortly after adoption of the Copyright Act.\textsuperscript{13}

\textbf{NOTICE: This material may be protected by copyright law (Title 17, U.S. Code).}

\textbf{Penalties for Infringement:}

A copyright infringer can be liable for actual damages and profits, or for statutory damages, as determined by a court. Statutory damages range from $750 to $150,000 per infringement, depending upon the nature of the infringement. In addition, the infringer can be assessed for court costs and the plaintiff’s attorney’s fees. Court costs and attorney’s fees frequently exceed the amount of damages and profits. When
infringe
ments are made for profit, criminal charges and potential imprisonment may be added.

**Innocent Infringers:**

An innocent infringer is one who can convince a court that he or she did not know his or her actions were an infringement of copyright. In these cases, the statutory damages can be lowered to not less than $200. Any faculty member who received this Faculty Copyright Manual may have difficulty proving he or she was an innocent infringer.

**Contributory Infringers:**

Contributory infringers are persons who have knowledge of, and facilitate, the infringing activities of others. A librarian, media coordinator, dean or principal who knows about an infringement (e.g., television programs videotaped off the air which are retained longer than permitted by the fair use guidelines), and who does nothing about it, could likely be accused of being a contributory infringer. He or she might therefore be named in litigation. When a copyright owner files a formal complaint against an institution for an infringement, those named in the complaint usually include the members of the governing board, the President of the school, the actual infringer(s) (i.e., the individual that actually committed the infringing acts) and contributory infringers.

**REFERENCES**

2. Id.
7. Id. at 564.
CHAPTER 2
Applying the Law to Specific Media

This chapter provides a brief synopsis of the law as it applies to commonly-used media.

PRINTED WORKS

“Printed works” include books, periodicals, pamphlets, newspapers and similar items.

A. Educational Fair Use Guidelines For Printed Works.

The discussion in this Section A of Chapter 2 is limited to copying by or for the faculty, as student and library photocopying is treated elsewhere. The fair use section of the copyright law authorizes individuals to copy a small part of a work. As noted in Chapter 1 of this Copyright Policy, the United States Congress has endorsed educational fair use guidelines regarding printed works. Specifically, these guidelines were first set forth in the “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals,” which was developed at the request of Congress by organizations representing, respectively, authors, educational institutions and the publishing industry.1 The guidelines have since been incorporated into Copyright Office Circular 21, the full text of which appears in Appendix A. The educational fair use guidelines regarding printed works are summarized as follows:

1. Single Copying by Teachers:

The following are minimum statements of fair use:

A teacher may make a single copy of any of the following for his or her research, lesson preparation, or use in teaching:

a. A chapter of a book;

b. An article from a periodical or newspaper;

c. A short story, short essay or short poem;

d. A chart, graph, diagram, cartoon, or picture from a book, periodical, or newspaper.

2. Multiple Copies for Classroom Use:

For each student in a class, one copy can be made for classroom use or discussion, so long as each of the following conditions is met:
a. **Poetry:** If a complete poem is copied it must be less than 250 words and printed on not more than two pages. If an excerpt of a poem is copied, the excerpt must not exceed 250 words.

b. **Prose:** (1) If a complete article, story or essay is copied it must be less than 2,500 words, or (2) If an excerpt of an article, story or essay is copied, the excerpt copied must not exceed 1,000 words or ten percent of the work, whichever is less. (If ten percent of the work is less than 500 words, a maximum of 500 words may be used.)

c. **Charts, graphs, diagrams, drawings, cartoons, and pictures:** One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue if the individual item is not separately copyrighted.

d. **Special works:** These include children’s picture books, comic books and other similar works which combine illustrations with a limited amount text and usually have less than 2,500 words in the entirety. These works do not fall within the rule of 2(b) above. Only two pages of these “special works” may be copied, on the condition that those two pages do not include more than ten percent of the words in the work.

e. **Copyright notice.** Any copy made for classroom use must include a notice that the copied material is subject to copyright protection.

f. **Spontaneity.**

(i) The copying must be at the request and inspiration of the individual teacher that will use the copied material.

(ii) **The inspiration to use material and the time when needed for use does not reasonably allow purchasing or seeking permission. This requirement disallows repeated use at a later date.**

g. **Cumulative Effect.**

(i) **One course.** The copies are to be used only in one course in the school. A “course” appears to include multi-section courses taught by the same or different teachers as one course using a uniform text and lesson plan. In colleges and universities, a course ends at the conclusion of each academic term. In elementary and secondary schools, it usually stops at the end of a grading period.

(ii) **Copying from same material/author.** Not more than one poem, article, story, essay, or two excerpts may be copied from one author, or more than three from a work or periodical volume (as opposed to an issue) during one class term.

(iii) **Per term limit.** During any one class term, and for any one course, there may not be more than nine instances of multiple copying for classroom use.
3. Prohibitions Regarding 1 (Single Copying for Teachers) and 2 (Multiple Copies for Classroom Use) above:

a. Copying may not be used to create anthologies, compilations or collective works.

b. “Consumable works” (i.e., workbooks, exercises, test booklets, etc.) may not be copied.

c. Copying shall not (1) substitute for purchases of books, publishers’ reprints or periodicals, (2) be directed by higher authority, or (3) be repeated from term to term by the same teacher without permission from the copyright owner.

d. The copies shall be distributed free, or the copying charges assessed to the students shall be limited to the actual cost of copying.

B. Copying by a Library or Archives.

Section 108 of the Copyright Act gives nonprofit libraries and archives certain rights to reproduce copyrighted works. These reproduction rights are distinct from the right to conduct “fair use copying,” treated earlier.

1. Section 108 Requirements. A Library or archive must meet certain basic requirements to take advantage of the below rights granted by Section 108 of the Copyright Act, in particular:

a. All copies must be made without direct or indirect commercial advantage;

b. The collections of the library or archives must be open to the public. In the case of limited-access research libraries, the collection must be open to qualified researchers regardless of their occupational or professional affiliation;

c. All photocopies must display a copyright warning notice on the first page of the photocopy (see Copyright Warning Notices in Chapter 1);

d. Any copy made on behalf of a patron must “become the property” of the patron (i.e., it shall not be borrowed and returned);

e. For any copy made for a patron, the library or archives must not be aware that the copy will be used for any purpose other than private study, scholarship or research; and

f. The library or archives must display a copyright warning notice at the place where it accepts orders for copies, and on its interlibrary loan request forms (see Copyright Warning Notices in Chapter 1).
2. **Copying for Patrons.** A library meeting the Section 108 requirements may copy for a patron:

   a. A single journal article or a small part of a book, or other copyrighted work.

   b. An entire copyrighted work, or a substantial part of it, if the library shall determine, after a reasonable investigation, that a new or used copy cannot be obtained at a fair price.

A library’s right to make copies for a patron does not extend to musical, pictorial, graphic, sculptural or audiovisual works, except that (i) illustrations appearing in a book or periodical which are copied for a patron under Section 108 may be copied as a part of the article or section being copied, and (ii) Section 108 does not limit the right of a library to reproduce and lend a limited number of copies and excerpts of an audiovisual news program. (Note: The fair use doctrine may permit copying beyond the scope that is permitted by Section 108 if the patron requests the copy for legitimate scholarship research, or teaching purposes and the copying otherwise qualifies as a fair use. (see Fair Use in Chapter 1 and Educational Fair Use Guidelines For Printed Works in Subsection A of Chapter 2).

3. **Copying By Library or Archive For Preservation, Security or Deposit.** Section 108 allows a library or archives meeting the Section 108 requirements to reproduce and distribute up to three copies of an *unpublished* work, solely for purposes of preservation, security or deposit for research in another library or archives (so long as that other library or archives is open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field) if:

   a. The work reproduced is currently in the collections of the library or archives; and

   b. Any copy 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.

4. **Copying By Library or Archive For Replacement Purposes.** Section 108 also allows a library or archives meeting the Section 108 requirements to reproduce 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, if:

   a. The library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

   b. Any such copy 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 that copy.

THE WESTMINSTER SCHOOLS FACULTY COPYRIGHT POLICY
5. No Systematic Reproduction. The rights granted by Section 108 of the Copyright Act extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions, but do not extend to cases where the library or archives engages in (a) related or concerted reproduction or distribution of multiples copies of the same material, or (b) the systematic reproduction or distribution of multiple copies of the same material.

C. Interlibrary Loans.

1. Introduction. Libraries are permitted to make copies of materials for sharing with other libraries through interlibrary loan arrangements. The U.S. Congress incorporated guidelines covering interlibrary loan copying into the legislative history related to the Copyright Act. The guidelines were developed by the National Commission on New Technological Uses of Copyright Works (CONTU), and are summarized below. While the guidelines are not part of the text of the Copyright Act, they would likely be viewed as highly persuasive authority by a court considering copying occurring as part of an interlibrary loan arrangement.

2. Summary of Guidelines for Interlibrary Loan Copying.

a. A library may request no more than five copies of articles from a periodical (not an issue) per year. However, this limitation does not apply to articles published five or more years before the date of the request.

b. A library or archives may request no more than five excerpts from a book or pamphlet while it is subject to copyright protection.

c. The above guidelines shall not apply if (a) the library has ordered a subscription to the periodical, or (b) the library owns the work but the copy is lost, stolen, or otherwise unavailable when the reproduction is requested, (c) the library has ordered the title, but it has not arrived. Under any of these circumstances, the requesting library or archives may request a copy through interlibrary loan, but the request shall not count as one of the five copies authorized by the CONTU guidelines.

d. Interlibrary loan requests must state that the request conforms with the CONTU guidelines or other provisions of the copyright law. Copies made under Paragraph B, section 2, above, fall under the “other provisions” section of the guidelines.

e. The requesting library must maintain records of filled orders. The records must be retained for three years after the end of the calendar year.
Library Reserve:

Traditional Paper Reserves.
Single or multiple copies of periodical articles and chapters of books may be placed on reserve in a library under the terms of Section 107, on fair use.² A single copy may be the faculty member’s single, fair use copy. Multiple copies may be placed on reserve in lieu of distributing multiple copies of the item to students in the class. The amount of copying under this exemption must be restricted to the number of items that may be distributed to a class during a term. Copies made under this provision only may be used for the semester in which they were placed on reserve. Any further use of the copies requires the permission of the copyright owner. The number of copies placed on reserve must be limited to a “reasonable” number. This obviously depends upon the size of the class; one copy per ten students may be “reasonable,” but the American Library Association (ALA) and American Association of Law Librarians (AALL) suggest a limit of six copies, regardless of the number enrolled.³

In summary, copying material for reserve purposes should meet the following conditions:

1. The faculty member’s single, fair use copy, or

2. Multiple copies placed on reserve which conform to the limits in the “Agreement on Guidelines for Classroom Copying . . . .” The quantity placed on reserve shall be “reasonable” in relation to the number of students in the class.

3. The copy(s) on reserve shall be identified as belonging to a faculty member and include a copyright notice or a copyright warning notice, or both.

4. Copying the material shall not adversely effect the market for the work.

5. Photocopied material may not be revised in subsequent semesters without the copyright owner’s permission.

Electronic Reserves and Electronic Posting.
Unless an electronic use is covered by the fair use doctrine or another specific copyright exception, anything posted to an electronic environment requires copyright permission prior to posting. For example, an electronic version of an excerpt of an article on The Westminster Schools’ Intranet is considered an electronic posting and is subject to the terms of this Copyright Policy, including the specific fair use guidelines outlined above.

MUSIC

Separate copyrights usually exist for sheet music and recorded musical performance. Additional copyrights may exist in the lyrics. Composers, lyricists, arrangers, performers, etc. receive royalties from the sale of their creative works. Music dealers usually sell sheet music in sets (e.g., band sets, chorus sets, etc.). Single copies may not be available
from dealers but can be ordered directly from the publisher. Copying sheet music without permission deprives the composers of royalties. Copying recordings deprives composers, arrangers, performers, et al. of their royalties. Fair use guidelines for music were developed by the Music Publishers’ Association, the National Music Publishers’ Association, the Music Educators’ National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision. The guidelines authorize limited copying and altering of sheet music. They also authorize recording student performances. The guidelines appear in Appendix B and are summarized here:

**Fair Use Guidelines for Music (“the minimum and not the maximum standards of educational fair use”):**

1. **Copying Sheet Music:**

   A. Emergency copies may be made to replace lost music when time does not permit purchasing replacement music before a performance. The emergency copies must be destroyed at the end of the performance and replaced with purchased copies.

   B. For teaching purposes, not performance, multiple copies of excerpts may be made provided that the excerpts do not constitute a performable unit such as a section, movement, or aria. The excerpt may not be larger than ten percent of the whole work and not more than one copy per pupil may be made.

   C. For teaching purposes, not for a performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is confirmed by the copyright proprietor to be out of print or unavailable except in a larger work, may be made for a teacher for his or her scholarly research or preparation to teach a class.

   D. Purchased sheet music may be edited or simplified if the fundamental character of the work is not distorted. Lyrics may not be altered or added if none exist.  

2. **Musical Recordings:**

   A. Student performances may be recorded for evaluation purposes only. The recording may be retained by the institution or the teacher.

   B. At one point, the committee included a provision authorizing educators to reproduce sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural learning exercises or examinations. This provision was withdrawn just before the guidelines were approved by Congress. Transfers from disk to tape or disk to CD always require permission.

3. **Performances:**
A. As discussed above, the fair use guidelines allow student performance to be recorded if the recordings are made only for critique or evaluation. That same privilege does not extend to recording performances by professional musicians from outside the institution without the permission of the performer and the copyright owner of the music. Licenses must be obtained for all public performances, unless they fall under the “free and benefit” provisions discussed below.

B. Live public performances of non-theatrical musical works are authorized under the “free and benefit” performance provision in Section 110(4) of the copyright law. The performance must be given without charge to the audience, or the income from admission fees in excess of costs must be applied to a charitable cause. In either case, the managers and performers must contribute their services or their contribution to the performance must be part of their overall duties as faculty members or staff members. This appears to authorize musical performances at school athletic events, if the proceeds over costs are applied to a charitable cause, such as a scholarship fund. In practice, most colleges and universities purchase performance licenses from the three major musical licensing agencies listed in Appendix G. These licenses cover all student performances of non-dramatic musical works. As a result of an “understanding” between the attorney for a major educational association and the licensing agencies, the agencies do not sell licenses to school districts.

C. Recorded music may not be performed at social occasions without a license from the licensing agencies listed in Appendix G.

4. Copying Records:

Copyrighted musical recordings may not be copied without permission. Such permission is rarely granted, so educators have little choice except to purchase additional quantities of the recordings.

5. Musical Transmissions and Broadcasts:

Live or recorded music may not be transmitted through a multi-room public-address system or cable system without a license. Live or recorded music may not be broadcast unless the station holds licenses from the three music licensing services listed in the Appendix G.

TELEVISION PROGRAMS

1. Off-air and Cable Receptions:

Television broadcasts and cable transmissions may be received and simultaneously shown to classes.

2. Recording Commercial Television Programs at School:
Commercial television programs for classroom use fall under the terms of guidelines. Guidelines were developed by representatives of educational organizations, copyright proprietors, and creative guilds (unions). While some proprietors disagree with the guidelines, the guidelines will be considered in any litigation involving videotaping off the air for classroom use. The text of the guidelines appears in Appendix C and is summarized here:

A. The guidelines only apply to off-air recording by nonprofit educational organizations.

B. Programs may be recorded from broadcast transmissions or from a simultaneous retransmission by cable distribution systems.

C. Programs must be transmitted to the general public without charge. This eliminates “pay” programming (HBO, CineMax, Disney Channel, etc.).

D. Programs may be retained for forty-five calendar days from date of recording. After forty-five days they must be erased or permission must be obtained for continued retention and use.

E. Programs may be shown to a class once, and repeated once for reinforcement, during the first ten “teaching days” following the broadcast. A “teaching day” is a day on which pupils receive instruction. It excludes holidays, weekends, examination periods and other non-teaching days.

F. Off-air recordings may be made by the teacher or by a media specialist or librarian at the request of a teacher. Programs may not be re-recorded by or for the same teacher when they are rebroadcast.

G. Programs may not be recorded in anticipation of teacher requests.

H. Off-air recordings need not be used in their entirety but they may not be altered from their original content, or electronically combined or merged.

I. All copies of off-air recordings must include the copyright notice, if one appeared in the program.

J. Educational institutions are expected to establish appropriate control procedures. An appropriate form appears in Appendix F.

3. Recording Commercial Television Programs at Home for Classroom Use:

There has been some concern about recording programs in the teachers’ homes and using the recordings in classrooms. The Sony Betamax case established that recording in the home for the use of the family and its friends was permissible. It did not address the
issue of teachers or students bringing the recorded programs to school for classroom viewing. There is a general consensus that bringing programs recorded at home to school for classroom viewing is permissible if the recording and performances comply with the “Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes.” It also should be emphasized that using programs beyond the ten “teaching day” limit is a copyright infringement.

4. Recording Television Programs Off the Satellite:

Satellite programming is protected by the Federal Communications Act. 8 Basically, programming may not be received without a license or written permission. The fair use exemptions in the copyright law do not apply, as satellite transmissions are private communications protected by the Federal Communications Act. A recent amendment to the Federal Communications Act authorizes “private viewing” in the home, if:

A. The programming is listed as “free” in a reputable satellite programming directory.

B. The programs are not scrambled or a subscription service has not been established. 9

This exemption applies only to viewing in the home and does not apply to educational receptions. An increasing number of educational satellite programs are now available (the Learning Channel, International University Consortium, National Technological University, PBS Adult Learning Satellite Service, etc.). These programs are offered through membership or by contract. Reception without a license or membership is illegal.

5. Recording Public Broadcasting Service (PBS) Programs:

Most PBS series are produced by a consortium of stations that underwrite the series and a producer who produces and distributes the series. The agreement between the stations and the producer frequently includes a provision authorizing the viewers of the underwriting stations to record and reuse the programs. The terms of these agreements vary widely and many European producers and distributors do not grant educational duplication rights. Since these rights vary from station to station, local PBS station(s) should be contacted for duplication rights.

6. Cable Transmission of Audiovisual Works:

Cable “transmission” of copyrighted works is limited to non-dramatic literary works. 10 Because audiovisual works are excluded from the definition of literary works, audiovisual works may not be transmitted without a license. 11 Many video distributors give free, in-building transmission licenses, but sell licenses for multi-building transmissions. Licenses are available from most educational video distributors and the prices are often negotiable. Cable transmission rights can and should be specified in institutional purchase orders for audiovisual materials so the transmission right is acquired simultaneously with the purchase of the programs. 12
7. Home-Use-Only and Rental Store Videos and DVDs:

Questions have been raised about the legality of classroom showings of videos labeled “For Home Use Only.” Videos and DVDs are sold with and without “nontheatrical-public-performance rights.” Those sold with the rights usually cost more because of the additional value conveyed in the sale. Videos and DVDs rented or sold at neighborhood video stores or sold through mail order catalogs are offered without performance rights, so they are labeled “For Home Use Only,” or something similar. Since they are sold without a performance license they are intended for private viewing in homes limited to family and friends. These videos and DVDs are usually much cheaper than videos and DVDs sold with a performance license. Some educational media distributors sell their products with or without “nontheatrical-public-performance rights.” Other firms only sell films, videos and DVDs without licenses.

One trade association operates a public relations campaign to persuade educators that it is illegal to show “For Home Use Only” videos and DVDs in classrooms. However, Section 110(1) of the copyright law states explicitly that any legitimately-made, copyrighted work may be performed or displayed by “instructors or pupils,” in “face to face teaching activities,” in “nonprofit educational institutions,” in “classrooms or similar places devoted to teaching.” Outside of that trade association, there is a general consensus that Section 110(1) allows showing videos and DVDs labeled “For Home Use Only” in classrooms when the following conditions are met:

A. They must be shown only to teachers and students in face-to-face instruction,

B. They must be shown only in courses given for academic credit,

C. They must be shown only in classrooms or other locations devoted to instruction (laboratories, gymnasiums, libraries, etc.), and

D. They must be legitimately-made copies.

Videos and DVDs labeled “For Home Use Only” may not be shown under the following circumstances:

A. Showings during entertainment or recreation activities (e.g., recess, lunch hour, and after school showings),

B. Showings to an audience which is not confined to the students and faculty assigned to a specific course, (e.g., showings at parents’ programs, residence hall social gathering, or community activities), and

C. Showings from illegally-made copies.\textsuperscript{13}
COMPUTER SOFTWARE

The 1976 copyright law was deliberately vague about copyright protection for computer software until a congressional committee could complete a study. The law was amended on December 12, 1980, following the receipt of the committee report. The amendment defines computer software as a literary work, which gives software copyright protection immediately upon creation. The amendment also permitted making one archival or back-up copy of each program. The International Council for Computers in Education (ICCE) issues a “Suggested Policy Statement on Duplicating and Using Computer Software in Academic Settings.” The latest edition of that statement appears in Appendix D and is summarized here:

Back-up Copy:

The Copyright Act allows the purchaser of software to:

1. Make one copy of software for archival purposes in case the original is destroyed or damaged through mechanical failure of a computer. However, if the original is sold or given away, the archival copy must be destroyed.

2. Make necessary adaptations to use the program.

3. Add features to the program for specific applications. These improvements may not be sold or given away without the copyright owner’s permission.

Computer Laboratories:

In computer laboratories where students and teachers have access to software, the institution should establish procedures that prevent illegal copying of software. Appropriate warning notices should be posted at the supervisor’s desk or the sign-in station. A suggested warning notice follows:

SOFTWARE COPYING WARNING

Software is protected by the copyright law and may not be copied without the copyright owner’s permission. You are liable for damages resulting from illegal duplication of software.

A short warning notice also should appear on all sign-in or check-out forms.

Multiple Loading:

It is convenient to load one program disk into several computers for simultaneous use of the program. It is unclear if this is legal, but the ICCE Software Guidelines suggest that this should not be allowed. Licenses authorizing multiple loading are available from some publishers.
COMPUTER USER AGREEMENT FORM

As a condition of using the institution’s computer equipment, I agree not to use the
equipment to duplicate copyrighted software, whether it is my personal copy or is owned
by the institution. I assume liability for any copyright infringements caused by me.

Signed: ___________________________  Date: ___________________________

Networks:

Many educational institutions have local area networks (LAN) or wide-area networks
(WAN) which enable large computers to serve many smaller computers or terminals
within the institution. Licenses are required to use software on networks.¹⁵

Database Downloading:

Downloading involves copying a data transmission from database utility to a user’s
computer. This shortens the “connect time,” which is the basis for most user fees. It also
enables the searcher to clean up the data before printing a copy. Databases are
copyrightable and copying from a database to a computer appears to be a copyright
infringement. The copyright owners generally accept temporary downloading as a fair
use as long as only one report is printed and the data is erased after printing the report.
The problem centers on long-term retention of data to reuse or to combine to create a
local database. Long-term retention for any purpose requires a downloading license.
These licenses are offered by most database utilities.¹⁶

OTHER ISSUES

Films, Videotapes and DVDs:

Films, videotapes and DVDs may not be copied or altered unless the copying meets the
four tests for fair use. While no guidelines have been developed, copying a small part of a
film, videotape or DVD may be permissible, if the four fair use criteria are met.
Producers argue that some parts of a program are critical to the total program and
copying even a small part violates the “substantiality” test in the second fair use criterion.
The courts have not established the validity of that argument or the amount of copying
required to be “substantial,” so caution is recommended.

Copying or altering an entire film, video or DVD without written permission is clearly an
infringement, unless it can be documented that the copy was made to preserve an old
program that is no longer available. Copying “preview” prints for any reason is a
conspicuous copyright infringement.

Filmstrips and Slide Sets:
Copying filmstrips and slide sets in their entirety, or altering a program, requires written permission. Transferring a program to another format (e.g., filmstrip to video, or filmstrip to slides) also requires permission. Copying a few frames or slides may be a fair use, if the four fair use criteria are met.

Newsletters:

Newsletters are unique because they are very brief and have a small circulation. Therefore, almost any copying deprives the publisher of a sale or subscription. Limited copying is possible under the “small part” exemption in the library photocopying or fair use sections of the law. However, a small part of a four-page newsletter may consist of only a few lines of text. Copying newsletters must be approached with great caution.

Artworks:

Artworks are copyrightable. The duplication of such works, in their entirety, by photography, sketching, rendering, casting, or printing, is a violation of the copyright law. The only exception is for copying illustrations in a book or periodical under the terms of “Agreement on Guidelines for Classroom Copying” or the library photocopying section of the law (see Appendix A).

Electrocopying (Computer Scanning):

Electrocopying is the process of entering books, periodicals, artworks, etc. into a computer by means of an optical scanner. Once a work is entered in the computer, it can be edited, manipulated, and reproduced. Electrocopying a text may be a fair use if it is used only for research (e.g., for textual analysis). Any other electrocopying of copyrighted texts requires the permission of the copyright owner. Artworks should not be electrocopied without permission, unless they are in the public domain. Electrocopying by students as a “learning exercise” may be permissible but the copies should be promptly erased.

Dramatic Works:

The right of the copyright owner to perform a dramatic work publicly precludes all public performance of a play, opera, operetta, or musical comedy without a license. Dramatic works may be performed in the classroom under the Section 110(1) exception, but all the requirements of that exception must be met, including the requirement that attendance be limited to the teacher and the pupils enrolled in the course.

Student Projects:

While the law does not specifically address student uses of copyrighted works, the Senate
Report accompanying the Copyright Revision Act of 1976 identifies “special uses” by students:

There are certain classroom uses which, because of their special nature, would not be considered an infringement in the ordinary case. For example, copying of extracts by pupils as exercises in a shorthand or typing class or for foreign language study . . . Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher . . . in a learning situation would be a fair use of the copyrighted work.19

Based upon that statement, a consensus has developed that students may copy copyrighted works as a learning exercise. This suggests that students can integrate all types of materials into sound-slide, film, or television productions. Programs made under this exemption may be submitted to the teacher for a grade, and may be shown to the other students in the class. However, the paper or product must remain the property of the student. Copies may not be retained by the teacher or the institution, it may not be shown, transmitted, or broadcast outside the classroom, and no copies may be sold or given away. Students who wish to make copies beyond these narrow constraints, or who wish to make additional uses of their student projects must use the permission procedures identified in Chapter 5.

REFERENCES

1 Composed of representatives from forty-one educational and professional organizations.
4 The full text of the guidelines appears in Appendix B.
6 Full text of the guidelines is in Appendix C.
8 Title 47, United States Code
10 Copyright Act, Section 110(2)
11 Copyright Act, Section 101
12 For an interesting approach to obtaining licenses or permissions, see Mary Jo James, Three Permission Survey, in Jerome K. Miller et al., Video Copyright Permissions: A Guide to Securing Permission to Retain, Perform, and Transmit Television Programs Videotaped Off The Air 73: (Copyright Information Services 1989).
15 Full text of the ICCE document appears in Appendix D.
18 Copyright Act, Section 110(1)17 U.S.C. § 110(1).
CHAPTER 3
Copyright Management

If a copyright policy is to be effective, someone must manage the details and provide staff training. This is the duty of the Copyright Officer.

Copyright Officer:

The copyright officer is not a police officer, but is an information provider and a coordinator of copyright transactions. He or she should be a helper, not a threat. The faculty and staff should be encouraged to consult the copyright officer about all copyright matters.

The copyright officer’s responsibilities are to

1. Implement the Westminster Copyright Policy,
2. Establish and implement procedures to assure the institution and its employees comply with the copyright law,
3. Prepare and distribute a Faculty Copyright Manual,
4. Conduct training programs to inform the faculty about the copyright law and the institution’s copyright policy,
5. Answer employees’ questions about the copyright law,
6. Post appropriate copyright warning notices on copying equipment,
7. Stay abreast of new developments in the copyright law,
8. Negotiate licenses to copy, perform, or modify copyrighted works, and
9. Maintain records of permissions, licenses, etc.
CHAPTER 4
Copyright Quick Guide

The following “quick guide” is a brief summary of the copyright law for the faculty. It cannot substitute for a careful reading of the entire Faculty Copyright Manual. This quick guide makes use of the fair use guidelines as well as the provisions in the law itself; see pp. 9-11 of the Westminster Schools Copyright Policy for more details. **It is Westminster’s policy that employees will adhere to these guidelines; exceptions are permissible, since the guidelines are only minimum standards of fair use, but each exception must be cleared in advance by the school’s Copyright Officer.** Footnotes have been omitted to keep the “Quick Guide” as brief as possible. The sources are cited elsewhere in this book.

I. Classroom Showing of Media Materials:

Films, videos, DVDs, etc., whether purchased, rented or leased, may be shown in classrooms as part of the established curriculum. They may not be shown for recreational or entertainment without a “nontheatrical-public-predominance license.”

II. Duplicating Print Materials for Classroom Use:

A. An individual educator may make:

1. Single copies of:
   a. chapter of a book,
   b. an article from a magazine or newspaper,
   c. a short story, short essay, or short poem, or
   d. a chart, graph, diagram, drawing, cartoon or a picture from a book, magazine or newspaper.

2. Multiple copies for classroom use (not to exceed one copy per student per course):
   a. a complete poem of less than 250 words,
   b. an excerpt, not to exceed 250 words, from a longer poem,
   c. a complete article, story, or essay of less than 2,500 words,
d. an excerpt from a larger printed work not to exceed ten percent of the whole or 1,000 words,

e. one chart, graph, diagram, cartoon, or picture per book or magazine issue if the individual item is not separately copyrighted, or

f. two pages or ten percent of the words from children’s picture books or comic books.

3. All copies must include an appropriate copyright warning notice.

4. Copying must be made by the teacher or at the request of the teacher—not at the direction of higher authority.

B. An individual educator may not:

1. Copy more than one work or two excerpts from a single author during one class term,

2. Copy more than three works from a collective work or periodical volume during one class term,

3. Make multiple copies of more than nine works for distribution to students in one class term,

4. Use photocopies to create, replace, or substitute for an anthology,

5. Copy “consumable” works such as workbooks, standard tests, answer sheets, etc., or

6. Copy the same work from term to term without permission.

III. Library Reserve:

In lieu of classroom distribution, a reasonable number of copies may be placed on reserve for one semester. The number of copies depends on the size of the class, possibly one copy per ten students. Repeated use of a given material requires written permission.

IV. Music Copying:

A. Sheet Music:

1. An educator may:
a. make an emergency copy for an imminent student performance, if the original copy was lost and there is not enough time to order a replacement copy. The temporary copy must be destroyed promptly after the performance,

b. make multiple copies (up to one per student) of excerpts not constituting an entire performance unit or more than ten percent of the total work for academic purposes other than performance,

c. edit or simplify purchased sheet music provided the character of the work is not distorted or lyrics added or altered, or

d. duplicate individual parts if they are out of print or unavailable except in complete works and are used for teaching purposes.

2. An educator may not:

a. copy to substitute for an anthology or collection,

b. copy from works intended to be “consumable,”

c. copy for purposes of performance except for emergency copies to replace a lost copy (item IV.A.I.a. above),

d. copy to substitute for purchase of music, or

e. copy without including the copyright notice.

B. Recordings:

1. An educator may make a single recording of student performances. The recording may be retained by the institution or the teacher for evaluation purposes only.

2. An educator may not reproduce musical recordings or convert them to another format (record to tape, tape to CD etc.) without written permission.

V. Recording Television Programs:

A. Recording Off the Air or Off the Cable:

1. The guidelines only apply to nonprofit institutions,
2. Television programs may be recorded from broadcast or simultaneous cable transmissions to the “general public,” which excludes premium-pay programs (HBO, CineMax, Disney, etc.),

3. Programs may be shown once and repeated once for reinforcement within ten “teaching days” of the broadcast. They may be retained for forty-five calendar days from the date of the broadcast,

4. Recording must be made by the teacher or at the request of the teacher,

5. Programs may not be rerecorded at a later date, regardless of the number of times it is rebroadcast,

6. A limited number of copies may be made to meet the needs of several teachers,

7. Programs need not be used in their entirety but may not be edited or electronically altered or combined,

8. All copies must include the copyright notice as it appears in the program, and

9. Institutions are expected to implement appropriate control procedures.

B. Recording Programs at Home for Classroom Use:

Television programs recorded at home by teachers may be used in the classroom if they meet all the conditions of the Recording Guidelines, noted in V.A., above.

C. Recording Public Broadcasting System Programs:

1. For short-term retention, follow the guidelines, in V.A., above.

2. For long-term retention, call the local PBS station for information about extended retention rights for specific programs.

D. Recording off of Satellites:

Programs may not be recorded from a television satellite unless the programs are authorized for free reception or the institution obtains a license to copy the programs.

E. Transmission of Audiovisual Works:
Films, videos, DVDs, etc. may not be transmitted to classrooms by open- or closed-circuit television without a transmission license or written permission.

F. Home-Use-Only and Rental Store Videos:

Programs labeled “For Home Use Only” or rented from rental stores may be used in classrooms under the following conditions:

1. The programs are shown to students in a face-to-face setting,

2. The programs are shown only in courses given for credit,

3. The programs must be shown only in classrooms or other locations devoted to instruction,

4. The programs must be legitimately-made copies, and

5. The programs may not be shown for entertainment, recreation, or reward.

VI. Computer Software and Databases:

A. Backup copies: One backup copy of computer software may be made for archival purposes in case the original is destroyed.

B. Computer Laboratories: Except for the back-up copy exemption above, software may not be duplicated without appropriate licenses or agreements.

C. Multiple Loading: Loading programs into several computers for simultaneous use is only permitted with permission or a license.

D. Networks: Computer software may not be used in a network (LAN or WAN) without permission or a license.

E. Database Downloading: Downloading from a database is an infringement. Short-term, single-use retention is “accepted” by the copyright owners as a fair use, but long-term retention and multiple use of data requires a license.

VII. Duplicating Films, Videotapes, DVDs, Slidesets, etc.

A. An educator may duplicate a “small part” of an item for research or instruction. While no guidelines exist for copying these materials, the congressional reports accompanying the Copyright Revision Act of 1976 suggest that copying ten percent of a program is reasonable, if the ten percent is not the “essence” of the work.
B. An educator may not:

1. Reproduce an audiovisual work in its entirety, or

2. Convert one media format into another (e.g., film to video, video to DVD), without permission.

VIII. Newsletters:

Only a very small part of a newsletter may be duplicated without permission.

IX. Artworks: Artworks may not be duplicated without written permission except for illustrations copied under the “Agreement on Guidelines for Classroom Copying” (see Appendix A below).

X. Electrocopying (Computer Scanning):

A. Artworks: scanning for the purpose of reproduction or for creating derivative works requires permission.

B. Text:

1. Scanning for research (e.g., textual analysis) is permissible, but

2. Reproduction to create a copy or to prepare a derivative work requires permission.

XI. “Free and Benefit” Performances: Storytelling, poetry readings, and musical performances of non-dramatic works are authorized if (a) admission is free, or (b) the gate receipts, over and above costs, go to a charitable cause, and the performers and managers contribute their services.

XII. Student Projects: Students may copy materials as a learning experience. This includes the right to integrate various materials into computer/sound/visual programs if the resultant product remains the property of the student, is not placed into the school’s collection and no copies are sold, broadcast, transmitted, or performed outside the classroom.
CHAPTER 5
Obtaining Permission

It is not difficult to request permission to duplicate or adopt copyrighted materials. Well-established procedures are available. For most materials, complete two copies of the request form shown in Appendix E and send to the copyright owner. Complete information must be supplied before permission can be given. It is important to maintain orderly records of permissions sought, denied, or granted.

Permission to perform, broadcast, or transmit music is obtained from ASCAP, BMI or SESAC. Their addresses appear in Appendix G.

Permission to retain programs recorded off the air is obtained from ASCAP, listed in Appendix G. If ASCAP cannot supply permission, permission must be obtained from the firm that produced the program, not the network.

Licenses to perform films and videos outside courses for credit are offered by Movie Licensing USA and the Motion Picture Licensing Corp. The addresses are in Appendix G.

Permission to copy computer software or use it on a network is obtained from the software publisher. Many software publishers sell a “site license” or “lab kit” to authorize making multiple copies of software or to authorize multiple loading.
Appendix A

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22, and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107, but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

The purpose of the following guidelines is to state the minimum and not the maximum 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 stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.
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.

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” above 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 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 teacher, 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 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 materials.

(C) Copying shall not:

(a) 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 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 B
Guidelines for Educational Use of Music

In a joint letter dated April 30, 1976, representatives of the Music Publishers’ Association of the United States, Inc., the National Music Publishers’ Association, Inc., the Music Teachers National Association, the Music Educators’ National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

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

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

A. Permissible Uses
1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.¹

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disk, cassette or CD) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, and like material.

3. Copying for the purpose of performance, except as in A(1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.
NOTES

1 Section A(2) was revised at the last moment, at the request of the joint committee that prepared the guidelines. The original text of Section 2 consisted of two parts. Part 2 (a) was redesignated in the final text as Part 2, as it appears near the top of the preceding page. Part 2 (b) of the original text was deleted. The deleted text read:

“(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.”
Appendix C
Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes

In March of 1979, Congressman Robert Kastenmeier, chairman of the House Subcommittee on Courts, Civil Liberties, and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee’s consensus as to the application of “fair use” to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. “Broadcast programs” are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. “School days” are school session days—not counting weekends, holidays, vacations, examination periods, and other scheduled interruptions—within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recording must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.
Appendix D

International Council for Computers in Education (ICCE) Suggested Software Use Guidelines

Background:

During 1982-83, educators, software developers, and hardware and software vendors cooperated to develop the ICCE Policy Statement on Network and Multiple Machine Software. This Policy Statement was adopted by the Board of Directors of the International Council for Computers in Education (ICCE) in 1983, and was published and distributed. It has received support from hardware and software vendors, industry associations, and other education associations. One component of the Policy Statement, the “Model District Policy on Software Copyright,” has been adopted by school districts throughout the world.

Now, three years later, as the educational computer market has changed and the software market has matured, ICCE has responded to suggestions that the policy statement be reviewed by a new committee and revisions be made to reflect the changes that have taken place both in the market place and in the schools.

The 1986-87 ICCE Software Copyright Committee is composed of educators, industry associations, hardware vendors, software developers and vendors, and lawyers. All the participants of this new Committee agree that the educational market should be served by developers and preserved by educators. To do so requires that the ICCE Policy Statement be revisited every few years while the industry and the use of computers in education are still developing.

Responsibilities:

In the previous Policy Statement, lists of responsibilities were assigned to appropriate groups: educators; hardware vendors; and software developers and vendors. The suggestion that school boards show their responsibility by approving a district copyright policy was met with enthusiasm, and many districts approved a policy based on the ICCE Model Policy. The suggestion that software vendors adopt multiple-copy discounts and offer lab packs to schools was likewise well received; many educational software publishers now offer such pricing. It is therefore the opinion of this committee that, for the most part, the 1983 list of recommendations has become a fait accompli within the industry, and to repeat it here would be an unnecessary redundancy.

Nevertheless, the Committee does suggest that all parties involved in the educational computing market be aware of what the other parties are doing to preserve this market, and that the following three recommendations be considered for adoption by the appropriate agencies.
School District Copyright Policy:

The Committee recommends that school districts approve a District Copyright Policy that includes both computer software and other media. A Model District Policy on Software Copyright is enclosed.

Particular attention should be directed to item five, recommending that only one person in the district be given the authority to sign software licensing agreements. This implies that such a person should become familiar with licensing and purchasing rights of all copyrighted materials.

Suggested Software Use Guidelines:

In the absence of clear legislation, legal opinion or case law, it is suggested that school districts adopt the enclosed Suggested Software Use Guidelines as guidelines for software use within the district. The recommendation of Guidelines is similar to the situation currently used by many education agencies for off-air video recording. While these Guidelines do not carry the force of law, they do represent the collected opinion on fair software use for nonprofit education agencies from a variety of experts in the software copyright field.

Copyright Page Recommendations:

The Committee recommends that educators look to the copyright page of software documentation to find their rights, obligations and license restrictions regarding an individual piece of software.

The Committee also suggests that software publishers use the documentation copyright page to clearly delineate the users’ (owners’ or licensees’) rights in at least these five areas:

1. How is a back-up copy made or obtained, how many are allowed, and how are the back-ups to be used (e.g., not to be used on a second machine at the same time)?

2. Is it permissible to load the disk(s) into multiple computers for use at the same time?

3. Is it permissible to use the software on a local area network, and will the company support such use? Or is a network version available from the publisher?

4. Are lab packs or quantity discounts available from the publisher?

5. Is it permissible for the owner or licensee to make copies of the printed documentation? Or are additional copies available, and how?
ICCE—Suggested Software Use Guidelines

The 1976 U.S. Copyright Act and its 1980 Amendments remain vague in some areas of software use and its application to education. Where the law itself is vague, software licenses tend to be much more specific. It is therefore imperative that educators read the software’s copyright page and understand the licensing restrictions printed there. If these uses are not addressed, the following Guidelines are recommended.

These Guidelines do not have the force of law, but they do represent the collected opinion on fair software use by nonprofit educational agencies from a variety of experts in the software copyright field.

*Back-up Copy:* The Copyright Act is clear in permitting the owner of software a back-up copy of the software to be held for use as an archival copy in the event the original disk fails to function. Such back-up copies are not to be used on a second computer at the same time the original is in use.

*Multiple-loading:* The Copyright Act is most unclear as it applies to loading the contents of one disk into multiple computers for use at the same time. In the absence of a license expressly permitting the user to load the contents of one disk into many computers for use at the same time, it is suggested that you not allow this activity to take place. The fact that you physically can do so is irrelevant. In an effort to make it easier for schools to buy software for each computer station, many software publishers offer lab packs and other quantity buying incentives. Contact individual publishers for details.

*Local Area Network Software Use:* It is suggested that before placing a software program on a local area network or disk-sharing system for use by multiple users at the same time, you obtain a written license agreement from the copyright holder giving you permission to do so. The fact that you are able to physically load the program on the network is, again, irrelevant. You should obtain a license permitting you to do so before you act.

**Model District Policy on Software Copyright**

It is the intent of [district] to adhere to the provisions of copyright laws in the area of micro-computer software. It is also the intent of the district to comply with the license agreements and/or policy statements contained in the software packages used in the district. In circumstances where the interpretation of the copyright law is ambiguous, the district shall look to the applicable license agreement to determine appropriate use of the software (or the district will abide by the approved Software Use Guidelines).

We recognize that computer software piracy is a major problem for the industry and that violations of copyright laws contribute to higher costs and greater efforts to prevent copying and/or lessen incentives for the development of effective educational uses of microcomputers. Therefore, in an effort to discourage violation of copyright laws and to prevent such illegal activities:
1. The ethical and practical implications of software piracy will be taught to educators and school children in all schools in the district (e.g., covered in fifth grade social studies classes).

2. District employees will be informed that they are expected to adhere to section 117 of the 1976 Copyright Act as amended in 1980, governing the use of software (e.g., each building principal will devote one faculty meeting to the subject each year).

3. When permission is obtained from the copyright holder to use software on a disk-sharing system, efforts will be made to secure this software from copying.

4. Under no circumstances shall illegal copies of copyrighted software be made or used on school equipment.

5. [Name or job title] of this school district is designated as the only individual who may sign license agreements for software for schools in the district. Each school using licensed software should have a signed copy of the software agreement.

6. The principal at each school site is responsible for establishing practices which will enforce this district copyright policy at the school level.

The Board of Directors of the International Council for Computers in Education approved this policy statement January, 1987. The members of the 1986 ICCE Software Copyright Committee are:

Sueann Ambron, American Association of Publishers
Gary Becker, Seminole Co. Public Schools, Florida
Daniel T. Brooks, Cadwalader, Wickersham & Taft
LeRoy Finkel, International Council for Computers in Education
Virginia Helm, Western Illinois University
Kent Kehberg, Minnesota Educational Computing Corp.
Dan Kunz, Commodore Business Machines
Bodie Marx, Mindscape, Inc.
Carol Risher, American Association of Publishers
Linda Roberts, US Congress, Office of Technology Assessment
Donald A. Ross, Microcomputer Workshops Courseware
Larry Smith, Wayne County Intermediate School Dist., Michigan
Ken Wasch, Software Publishers’ Association

For more information write to the ICCE Software Copyright Committee, ICCE, University of Oregon, 1787 Agate St., Eugene, OR 97403.
Appendix E
Permission Request Form

[Institutional letterhead]
[date]

[Name and address]

Dear Sir/Madam:

Please may I/we have permission to copy the following:

1. Work: [author, title, edition, and date]
2. Pages: [list pages to be copied]
3. Copying method: [photocopy, transfer to slides, etc.]
4. Number of copies:
5. Use of copies: [distribution to students, incorporated in a book, etc.]
6. Distribution: [class handout, shown in class, etc.]
7. Cost to audience: [distributed free, etc.]
8. Type of copy: [photocopy, printout, slide, etc.]
9. Modifications: [if any]
10. Intended date of use:

Enclosed is a photocopy of the material requested.

Two copies of this form are being sent. If you will grant permission, please check the appropriate box, sign, and return one copy to me. The other copy can be retained for your files. Thank you.

Sincerely,

[Signature]
[Name typed]
>Title

[] Permission granted as per request
[] Permission denied.

Conditions if any:

Signature:

Title: Date:
Appendix F
Request for Off-Air Taping

The “Guidelines for Off-Air Recording of Broadcast Programming for Education Purposes” requires that records be maintained to assure that the conditions in the fair-use guidelines are observed. The following information is necessary to assure that the institution complies with the criteria. Please complete all the information and return the form to the Copyright Officer.

Instructor:____________________________________________________

School/Department:________________________________________________

Class:__________________________________________________________

PROGRAM RECORDED AT SCHOOL

Title of Program:_________________________________________________

Station or Channel:______________________Length of Program:____________

Date Recorded:_____________________ Date of Use:_____________________

Required Erase Date:____________________ Date Erased:___________________

PROGRAM RECORDED AT HOME

Title of Program:_________________________________________________

Station or Channel:______________________Length of Program:____________

Date Recorded:_____________________ Date of Use:_____________________

Required Erase Date:____________________ Date Erased:___________________

Would you recommend this material for purchase, lease or license? [ ] Highly Recommended [ ] Recommended [ ] Not Recommended

How many times would you use this program each year? ________________

[Signature]
Appendix G
Selected Addresses

General Copyright Information:

Library of Congress
Copyright Office
101 Independence Avenue
Washington, D. C. 20559-6000
202-707-3000
www.copyright.gov

Television Network Offices:

ABC
500 S. Buena Vista Street
Burbank, CA  91521-4551
818-460-7477

CBS
51 West 52nd Street
New York, NY  10019
212-975-4321

CBS News
555 West 57th Street
New York, NY  10019
212-975-4114

NBC
30 Rockefeller Plaza
New York, NY  10112
212-664-4966

PBS
2100 Crystal Drive
Arlington, VA  22202
703-739-5000
800-344-3337
www.pbs.org
Sources for Public Television Programs:

PBS
2100 Crystal Drive
Arlington, VA 22202
703-739-5000
800-344-3337
www.pbs.org

Agency for Instructional Technology
Box A
1800 North Stonelake Drive
Bloomington, IN 47402-0120
800-457-4509
info@ait.net

Great Plains National
1407 Fleet Street
Baltimore, MD 21231
800-306-2330

Television/Film Performing Rights Agencies:

Criterion Pictures USA, Inc.
8238-40 Lehigh
Morton Grove, IL 60053-2615
1-800-890-9494
1-847-470-8164
Fax: 1-847-470-8194
Email: greatmovies@media2.criterionpic.com
http://www.criterionpicusa.com

Kino International Corp.
333 W. 39th Street, Suite 503
New York, NY 10018
1-800-562-3330
1-212-629-6880
Fax: 1-212-714-0871
Email: contact@kino.com
http://www.kino.com
Milestone Film & Video
P. O. Box 128
Harrington Park, NJ 07640-0128
1-800-603-1104
1-201-767-3035
Email: info@milestonefilms.com
http://www.milestonefilms.com

Movie Licensing USA
A division of Swank Motion Pictures, Inc.
201 South Jefferson Avenue
St. Louis, MO 63103-2579
Schools: 1-877-321-1300
Libraries: 1-888-267-2658
Fax: 1-314-287-1748 (schools)
Fax: 1-877-876-9873 (libraries)
Email: mail@movlic.com or mail@swank.com
http://www.movlic.com
http://www.swank.com

Motion Picture Licensing Corp. (MPLC)
5455 Centinela Avenue
Los Angeles, CA 90066-6970
1-800-462-8855
1-310-822-8855
Fax: 1-310-822-4440
Email: info@mplc.com
http://www.mplc.com

New Yorker Films
16 West 61st Street
New York, NY 10023
1-877-247-6200
1-212-247-6110
Fax: 1-212-307-7855
Email: info@newyorkerfilms.com
http://www.newyorkerfilms.com

Music Performing Rights Agencies:

American Society of Composers, Authors and Publishers (ASCAP)
One Lincoln Plaza
New York, NY 10023
212-595-3276
www.ascap.com

ASCAP-Atlanta
2690 Cumberland Parkway SE
Suite 490
Atlanta, GA 30339-3913
770-805-3470

Broadcast Music, Inc. (BMI)
320 West 57th Street
New York, NY 10019-3790
212-586-2000
licensing@bmi.com

SESAC, Inc.
55 Music Square East
Nashville, TN 37203
615-320-0055
www.sesac.com/licensing/licensing1.asp

SESAC-Atlanta
981 Joseph E. Lowery Blvd., NW
Suite 111
Atlanta, GA 30318
404-897-1330