

# Chapter 500 Sponsored Programs, Research, and Intellectual Property

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## 500.2.2[G] Guidelines on Photocopying Copyrighted Materials

Purpose and scope.

These guidelines are intended to assist faculty and staff of the University of North Carolina to understand and comply with copyright law that governs the photocopying of printed materials. Not addressed are the respective rights of writers and their employers in works that may have been created within on-going employment or pursuant to an *ad hoc* employment agreement. Those rights are addressed by the University of North Carolina Patent and Copyright Policies, embodied in Section 500.2 of this *Policy Manual*.

Extent of photocopying rights.

The Copyright Act of 1976 (effective January 1, 1978) is the sole statute governing copyright of written materials in the United States. It is a federal law that expressly preempted any state statutes or common law on the subject and that substantially rewrote the predecessor federal law, the 1909 copyright law. Under the present act the owner of copyright in a work has the exclusive right to reproduce the work in copies or to distribute the copies to the "public by sale or other transfer of ownership, or by rental, lease, or lending." (Section 106) (Note: This and all other statutory references, unless otherwise indicated, are to the Copyright Act of 1976 as it is set forth in the United States Code, Title 17.)

Duration of copyright.

Copyright in most written works created on or after January 1, 1978, lasts from their creation through the life of the author plus 50 years. (Section 302) Creation of a written work occurs when it is first "fixed in copy," that is, when it is first written down or otherwise recorded. (Section 101)

The 1976 Act contains provisions for defining the potential life of copyright in works created before January 1, 1978, but the basic effect is to extend for a total duration of 75 years copyrights existing as of the effective date of the 1976 Act. (Sections 303 and 304) As the maximum life of copyright under the old law was 56 years (a 28-year term plus a 28-year renewal), no copyright issued prior to 1908 is in force in 1983. Copyrights issued since 1908 under the old law and properly renewed may be in force by extension under the 1976 Act; however, the existence of the necessary renewal will likely not be apparent from the work's copyright notice. Consequently, the safe path is either (1) to treat any pre-1978 copyright as valid from its date to the end of its seventy-fifth calendar year or (2) to contact the publisher or the U.S. Copyright Office, to identify the copyright owner so that continued vitality to the copyright can be determined.

Exceptions to copyright.

Ownership in a work prohibits another's copying the work unless one or more of the following conditions exists:

1. the work was never copyrighted.
2. copyright in the work has expired.
3. the work lies in the public domain.
4. the copying falls within "fair use" privileged under Section 107.
5. the copying falls under certain library or archival copying privileged under Section 108.
6. the copyright owner has given appropriate permission.

No copyright. Copyright is indicated by the letter "C" in a circle, or the word "Copyright," or the abbreviation "Copr.," followed by the year of first publication and the name of the copyright owner. (Section 401) Absence of copyright notice on a work published prior to January 1, 1978, leaves the work unprotected. Absence of copyright notice on a particular copy of a work "publicly distributed by authority of the copyright owner" after January 1, 1978, does not invalidate copyright in a work if certain remedial actions are taken by the copyright owner or certain statutorily specified circumstances surround the omission. However, one who innocently or in good faith is misled by the lack of copyright notice on a particular authorized copy will be protected in any subsequent infringement action for actual or statutory damages down to the date of actual notice to the user of copyright registration. (Section 405) The details of this "innocent" or "good faith" infringer clause are discussed below under "Infringement remedies/defense."

Expired copyright. A work whose copyright has expired lies in the public domain and may be freely copied. Determination that a copyright has expired should be made by reference to provisions discussed above under "Duration of copyright."

Public domain. Works that were never copyrighted or whose copyright has expired lie in the public domain and are available to anyone to copy. Among the works that are public domain from their creation are publications of the U.S. Government, which are not copyrightable. (Section 105) However, the U.S. Government may receive by assignment, gift, or otherwise and then hold the copyright in works privately created. Furthermore, works privately created under federal contract or federal grant support may be copyrighted if such copyright is not prohibited by the federal contract or grant.

While an original work may lie in the public domain, any edition or other derivative of the work may be copyrighted by the author of the derivative work (e.g., the publisher or editor of a particular printing). Therefore, indication of copyright on the particular copy of the work intended for photo copying, not the age of the parent work, is the basis for determining copyright status.

Fair use. The Copyright Act of 1976 gives the status of statutory law to certain uses of copyrighted works that prior to January 1, 1978 were privileged only under various court holdings. This is "fair use" as authorized under Section 107, which reads as follows:

Sec. 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106 [exclusive rights of copyright owner], the fair use of a copyrighted work, including such use by reproduction in copies or phono-records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for class room use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Though now a statutory privilege, not merely a judicial doctrine, fair use remains a difficult protection to measure for several reasons, two of them being:

1. the fair use "factors" set forth as standards in Section 107 are not the sole considerations that could justify photocopying as fair use;
2. not all of the four specific factors set forth in Section 107 need be present to justify as fair use every incident of unlicensed photocopying. Rather, "the courts must be free to adapt the doctrine to particular situations on a case-by-case basis." (House Report No. 94- 1476)

In response to these uncertain boundaries of the fair use privilege representatives of the publishing industry and education negotiated as a minimum "safe harbor" the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions." These guidelines (Attachment A) are one means to help gauge whether particular photocopying lies within the fair use privilege. It should be noted, however, that the purpose of the negotiators, to define a minimum usage, is clearly stated in the guidelines and that the quantitative sections of the guidelines have more apparent utility at a small, elementary or secondary school than at a University or large college. However, some of the qualitative parts of the guidelines, like "Spontaneity," are thoroughly consistent with the standards of Section 107 itself and are also realistic tests for University faculty and staff to apply in judging the propriety of particular copying.

In like manner, "Guidelines for Educational Uses of Music" were negotiated among music publishers, music teachers, and schools of music. These guidelines (Attachment B) are useful minimum criteria for fair use of music by copying.

Library and archival copying. Section 108 of the 1976 Copyright Act establishes some limited privileges for photocopying and distribution by libraries and archives. These privileges are somewhat similar to fair use under Section 107, but there are many significant differences. All the privileges of photocopying under Section 108 require that the copy:

1. be made without the purpose of direct or indirect commercial advantage;
2. be made by a library or archives that is open to the public or at least to nonaffiliated researchers "doing research in a specialized field"; and
3. include a "notice of copyright." (See the discussion, above, of "No copyright" for the elements of the required notice.)
  1. Preservation. Copying that qualifies under the three initial conditions, above, may be used to preserve and keep secure an unpublished work or to deposit an unpublished work for research at another library qualifying under (b), above. This work, however, must be currently in the copying library's collection and be copied in "facsimile form"; that is, the copy must be a total reproduction, not a partial or edited version.
  2. Replacement. Copying that meets the three initial conditions, above, may also be used to replace a damaged, deteriorating, lost, or stolen copy of a published work if, after reasonable effort, the library has been unable to find a unused replacement available at a fair price. The copy, too, must be made only in facsimile form.
  3. Excerpts. Copying that meets the three initial conditions, above, may be used to reproduce "no more than one article or other contribution to a copyrighted collection or periodical issue, or to . . . a small part of any other copyrighted work" if, in addition:
    1. the copy becomes the property of the user;
    2. the library has had no notice that the copy will be used for any purpose "other than private study, scholarship, or research"; and
    3. the library "displays prominently, at the place where orders are accepted, and includes on its order form a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation." (See Attachment C for regulations of the e Register of Copyrights prescribing the form and content of the "Display Warning of Copyright" and the "Order Warning of Copy right.")
  4. Whole works. Copying that meets the three initial conditions, above, and the three conditions of (3), above, may be

- used to reproduce an "entire work or . . . a substantial part of it" if the library also "has first determined, on the basis of a reasonable investigation that a copy . . . of the copyrighted work cannot be obtained at a fair price."
5. Unsupervised copying machines. If a library has an unsupervised copier on its premises and if an unsupervised user copies materials in a manner infringing their copyright, neither the library nor its employees will be liable for the infringement if at the copying machine there was posted a notice "that the making of a copy may be subject to the copyright law."
  6. Excessive copying. No individual may use a library's unsupervised copier, or request a library to copy excerpts of a work, as contemplated under Section 108, in a manner exceeding the fair use limitations of Section 107 either as to the extent of the copying or as to the later use of the copy.
  7. External standards. No privilege established by Section 108 either extends or diminishes the fair use privileges under Section 107 or the terms under an agreement between the library and the supplier of a work in the library's collections. For instance, either Section 107 or a publisher's subscription agreement might permit a library to make multiple copies of a magazine article for classroom use although Section 108 is limited to the making of single copies.
  8. Repeated copying. The single copies authorized by Section 108 are limited to "isolated and unrelated" production, and exclude copying where the library or its employee "is aware or has substantial reason to believe" that copying on one occasion or series of occasions is causing multiple copies of the same material. Section 108 also does not authorize "systematic" copying except interlibrary arrangements not having the "purpose or effect" of providing the receiving library "such aggregate quantities as to substitute for a subscription to or purchase of such work." (Voluntary guidelines for interlibrary arrangements, developed by the National Commission on New Technological Uses of Copyrighted Works [CONTU], are provided as Attachment D).
  9. Exclusion of nonverbal works. Copying of musical, pictorial, or graphic works is not authorized under Section 108 except in these two circumstances:
    1. Where a musical, pictorial, or graphic work is to be copied under conditions defined under (1) or (2), above ("Preservation," "Replacement").
    2. Where a pictorial or graphic work (but not a musical work) published as an illustration, diagram, or similar adjunct to a work is to be copied as part of the larger work under conditions defined under (3. "excerpts") or (4. "wholeworks"), above.

Permission of copyright owner. Where permission to copy a work has been given by the owner of the copyright, there is no liability for the copying authorized. In most cases, the copyright notice at the front of the work will indicate the owner. The owner should be addressed in the manner indicated in the sample permission letter at Attachment E. Journal articles may be licensed for copying through the Copyright Clearance Center, 310 Madison Avenue, New York, NY 10017. Unknown copyright holders in published works may often be identified through *The Literary Marketplace* (for books) and *Ulrich's International Periodicals* (for journals).

#### Infringement remedies/defense.

Civil action. The owner of a work whose copyright has been infringed may sue the infringer and seek the following remedies: (1) temporary and final injunctions against infringement; (2) impoundment of infringing copies; (3) destruction or other reasonable disposition of the infringing copies and any masters or negatives of the infringing copies; (4) actual damages to the owner; (5) profits of the infringer attributable to the infringement; and (6) court costs and reasonable attorney's fees. In lieu of actual damages and profits a copyright owner may seek with respect to any one work damages of not less than \$250 nor more than \$10,000, "as the court considers just." This award of statutory damages may be increased to not more than \$50,000 where the court is shown to its satisfaction that the infringement was committed "willfully." However, the award of statutory damages may be reduced to not less than \$100 where:

1. the infringer "believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107"; and
2. the infringing copying was done by a nonprofit educational institution, library, or archives or by its employee or agent "acting within the course and scope of his or her employment." (Section 504)
3. the infringer "believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107"; and
4. the infringing copying was done by a nonprofit educational institution, library, or archives or by its employee or agent "acting within the course and scope of his or her employment." (Section 504)

Criminal proceedings. A person who infringes a copyright by copying printed materials "willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$10,000 or imprisoned for not more than one year or both." In addition, the infringing copies may be forfeited or otherwise disposed of.

Fraudulent attachment, removal, or alteration of a copyright notice carries a maximum fine of \$2,500. (Section 506)

Legal defense. The Attorney General of North Carolina is authorized to defend a State employee or former

State employee in both civil and criminal proceedings brought against the employee" in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee."Defense of the employee, however, may be refused where the Attorney General or the Attorney General's delegate determines that:

1. the act or omission was not within the scope and course of employment as a State employee; or
2. the employee or former employee acted or failed to act because of the employee's actual fraud, corruption, or malice; or
3. defense of the proceeding by the State would create a conflict of interest between the State and the employee or former employee; or
4. defense of the proceeding would not be in the best interests of the State. (G.S. Chapter 143, Article 31A)

When the State does stand in defense of a State employee, the State agency that employed the defendant must pay any judgment, settlement, or other established claim, but the State agency may not pay an amount greater than \$100,000 "cumulatively to all claimants on account of injury or damage done to any one person."(N.C.G.S. Chapter 143, Articles 31 and 31A)

Because of these considerations it is clear that, while protection to University employees is considerable, it is limited to those instances of alleged copyright infringement where the State can justify its acceptance of potential liability by reference to the particulars of why and how the copying took place. It becomes important, then, that University faculty and staff realize that copying for classroom materials might induce defense by the State but that copying related to private consulting will likely not. It is also important to note that copying done at University libraries and campus copy centers by University staff (whether they be users of the copies or just machine operators) will induce the State to defend only after the State considers what the staff knew or should have known about copyrights in the materials and their probable use.

On June 10, 1983, the Association of American Publishers, Inc. asked the constituent institutions to adopt a "Policy Statement on Photocopying of Copyrighted Materials for Classroom and Research Use." This "policy statement" was based upon a settlement on April 7, 1983 of the *Addison-Wesley Publishing Co., Inc., et al v. New York University, et al. case*. This "policy statement" is administratively unwise and contrary to *The Code of The University of North Carolina* and is, therefore, not to be adopted as policy within the University.

[This is a rewrite of Administrative Memorandum #188 and a memorandum to the chancellors dated October 24, 1983, from David N. Edwards, Jr.]

## Appendix A

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

The purpose of the following guidelines is to state the minimum 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 there of, may be reproduced.
- D. 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.
- E. 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.]

[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.]

- F. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- G. "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 there of, 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.
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- i. 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 are reproduced and used separately.
- B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
  - a. substitute for the purchase of books, publisher's reprints or periodicals:
  - b. be directed by higher authority:
  - c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

AGREED

March 19, 1976

AD HOC COMMITTEE ON AUTHOR-PUBLISHER

COPYRIGHT LAW REVISION GROUP AUTHORS LEAGUE OF AMERICA

By Sheldon Elliott Steinbach By Irwin Karp, Counsel

ASSOCIATION OF AMERICAN

PUBLISHERS, INC.

By Alexander C. Hoffman,

Chairman

Copyright Committee

## Appendix B

### Guidelines Under Fair Use for Music

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of 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 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 area, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

#### 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.

## Appendix C

### 201.14 Warnings of copyright for use by certain libraries and archives

#### 1. Definitions.

1. A "Display Warning of Copyright" is a notice under paragraphs (d)(2) and (e)(2) of section 108 of Title 17 of the United States Code as amended by 94 P.L. 533 [paragraphs (d)(2) and (e)(2) of section 108 of this title]. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phono-records are accepted by certain libraries and archives.
2. An "Order Warning of Copyright" is a notice under paragraphs (d) and (e)(2) of section 108 of Title 17 of the United States Code as amended by 94 P.L. 533 [paragraphs (d)(2) and (e)(2) of section 108 of this title]. As required by those

sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phono-records.

2. Contents. A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

#### NOTICE

##### 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 materials.

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 copyright law.

#### (c) Form and Manner of Use.

1. A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.
2. An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

#### Appendix D

##### Guidelines for Interlibrary Arrangements

(The following is reprinted from the Conference Report of September 29, 1976.)

#### Introduction

Subsection 108(g)(2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phone-records for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good officers to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of Section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals - those published within 5 years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than 5 years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course these guidelines would not apply to such a situation.

#### Guidelines for the Proviso of Subsection 108(g)(2)

1. As used in the proviso of subsection 108(g)(2), the words ". . . such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:
  1. With respect to any given periodical (as opposed to any given issue of a periodical) filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within 5 years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly,

to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than 5 years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of ". . . such aggregate quantities as to substitute for a subscription to [such periodical]."

2. With respect to any other material described in subsection 108(d)(including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phono-records of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.
2. In the event that a requesting entity --
  1. shall have in force or shall have entered an order for a subscription to a periodical, or
  2. has within its collection, or shall have entered an order for, a copy or phono-record of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phono-record from a supplying entity only under those circumstances where the requesting entity would have been able, under the provisions of Section 108, to supply such copy from materials in its own collection.
3. No request for a copy or phono-record of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.
4. The requesting entity shall maintain records of all requests made by it for copies or phono-records of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.
5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than 5 years from the effective date of this bill.

#### Appendix E

##### Sample Letter Requesting Permission To Copy

Date

[Publisher's Address]

Dear Sir or Madam:

I would like permission to copy the following for continued use in my classes in future semesters:

Title:

Copyright:

Author:

Material to be duplicated:[Chapters 10, 11, and 14] (photocopies enclosed)

Number of copies:

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

Type of reprint: photocopy

Use:The chapters will be used as supplementary teaching materials in my classes.

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

Sincerely,

Faculty Member

500.2.2[G]: Adopted 10/31/83

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