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Chapter 500 Sponsored Programs, Research, and Intellectual Property

500.2 Patent and Copyright Policies

I. Policy

The University of North Carolina is dedicated to instruction, research, and extending knowledge to the public (public service).It is the policy of the University to carry out its scholarly work in an open and free atmosphere and to publish results obtained there from freely.Research done primarily in anticipation of profit is incompatible with the aims of the University.The University recognizes, however, that patentable inventions sometimes arise in the course of research conducted by its employees and students using University facilities.The Board of Governors of the University of North Carolina has determined that patenting and licensing of inventions resulting from the work of University personnel, including students, is consistent with the purposes and mission of the University.

The aim of the patent policies of the University is to promote the progress of science and the useful arts by utilizing the benefits of the patent system consistent with the purposes for which it was established by Article I, Section 8, of the Constitution of the United States:

The Congress shall have power . . To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Patents provide a means to encourage the development and utilization of discoveries and inventions. These policies have been established to ensure that those inventions in which the University has an interest will be utilized in a manner consistent with the public good through patents, licenses, or otherwise.The University is also aware of the value of patents in directing attention to individual accomplishment in science and engineering.Where possible, the University should make inventions resulting from its research available to industry and the public on a reasonable and effective basis and at the same time provide adequate recognition to inventors.Patents and their exploitation, however, represent only a small part of the benefits accruing to the public from the research program of the University.

A portion of the research conducted by the University is supported by government and a portion by private industry.Service to the public, including private industry, is an integral part of the University's mission. In agreements with private industry or other private organizations, the constituent institutions of the University must keep the interests of the general public in view.The rights and privileges set forth in cooperative agreements or contracts, with respect to patents developed as a result of research partly or wholly financed by private parties, must be fair and just to the inventor(s), the sponsor and the public.Research should be undertaken by the University under support from private parties only if it is consistent with and complementary to the University's goals and responsibilities to the public.

II. Objectives

The principal objectives of the University of North Carolina Patent and Copyright Policies set forth herein are:

1. to provide appropriate incentive to creative intellectual effort by faculty, staff, students, and others associated with the constituent institutions of the University;
2. to establish principles for determining the interests of the constituent institutions, inventors, and sponsors in regards to inventions and/or discoveries;
3. to enable the constituent institutions to develop procedures by which the significance of inventions and/or discoveries may be determined and brought to the point of commercial utilization;
4. to provide the means for placing in the public realm the results of research, while safeguarding the interests of the University, inventor, and sponsor; and
5. to recognize the right of the inventor to financial benefits from the invention or discovery.

III. Coverage

The University of North Carolina Patent and Copyright Policies apply to all University employees at each constituent institution, both full and part time, including faculty, other professionals exempt from the Personnel Act, staff subject to the Personnel Act, and students of each constituent institution.Upon prior written agreement between persons and the constituent institutions, these policies may be applied to persons not associated with the University who make their inventions available to the institutions under circumstances where the further development and refinement of the inventions are compatible with the research programs of the constituent institutions.

IV. Patent Ownership

Condition of Employment and Enrollment

The patent and copyright policies of the University of North Carolina, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee of each constituent institution, including student employees, and of the conditions of enrollment and attendance by every student at each constituent institution.

Ownership

With the exception of "Inventions made on Own Time," hereinafter defined, every invention or discovery or part thereof that results from research or other activities carried out at a constituent institution, or that is developed with the aid of the institution's facilities, staff, or through funds administered by the constituent institution, shall be the property of the constituent institution and, as a condition of employment or enrollment and attendance, shall be assigned by the University inventor to the constituent institution in a manner determined by the constituent institution in accordance with these policies.

Patent Application

Patents on inventions made by University employees or students, may be applied for in any country by the constituent institution or through an authorized agent(s) or assignee(s).The constituent institution shall exercise its rights of ownership of such patent(s), with or without financial gain, with due regard for the public interest, as well as the interests of inventors and sponsors concerned.

Inventions Made on Own Time

Inventions or discoveries made by University personnel or students entirely on their personal time and not involving the use of University facilities or materials are the property of the inventor except in case of conflict with any applicable agreement between the institution and the federal or state government or agency thereof.For purposes of this provision, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, extension, University service, or direction or conduct of research on University premises or utilizing University facilities. The term "University facilities" shall mean any facility, including equipment and material, available to the inventor as a direct result of the inventor's affiliation with the University, and which would not be available to a non-University individual on the same basis.

Personnel or students who claim that inventions are made on personal time have the responsibility to demonstrate that inventions so claimed are invented on personal time.All such inventions shall be disclosed in accordance with the institutions' disclosure procedures applicable to inventions made on University time or with the use of University facilities, materials or equipment, and shall demonstrate the basis of the inventor's claim that only personal time was utilized. In each instance so demonstrated to conform to the definition of personal time, the institution shall acknowledge in writing that the invention is the sole property of the inventor in accordance with the "waiver" provision, below.

If the inventor so desires, inventions or discoveries made on personal time and utilizing the inventor's own facilities and materials may be assigned to the institution.Under this arrangement, the procedures will be the same as for inventions or discoveries made by University personnel on University time and/or with the use of University facilities and materials.

Waiver and Release of University Rights

Pursuant to these policies and to its patent procedures, a constituent institution, after consultation with the inventor, shall cause its rights to subsequent patents, if any, to be waived to the inventor if the institution is convinced that no University facilities, time, or materials were used in the development of the discovery or invention, that it was made on personal time, and that such waiver would not conflict with any pertinent agreement between the institution and a sponsoring agency or agencies.

Pursuant to these policies and to its patent procedures, a constituent institution, after consultation with the inventor, may in its discretion and upon such terms as it deems appropriate, cause its rights to the discovery or invention, if any, to be released and waived to the inventor if the institution is convinced that the discovery or invention is clearly one that is non-patentable, that it does not warrant further evaluation as to patentability, or if the discovery or invention has been returned to the institution after negative evaluation by the institution's agent(s).

V. Income From Patents

The Inventor

The inventor shall receive not less than fifteen percent (15%) of the gross royalties derived from licensing or income from assignment or sale of each patent resulting from his invention and owned by the constituent institution pursuant to these policies.With this limitation, the exact proportion shall be determined in accordance with the institution's patent procedures as approved by the institution's Board of Trustees and the President.

The Institution

Income earned by each constituent institution from its patent and licensing activity shall be held in a separate trust fund by that institution to support research.The particular unit of the institution employing the inventor or furnishing the research facilities will be given preferential consideration, though not necessarily exclusive consideration, in the allocation of such royalty income by the institution.Allocations from such trust funds shall be made by the chancellor of each institution after receiving

recommendations from the institutional patent committee.

VI. Specific Conditions Governing Sponsored Research

Government Sponsored Research

Patents on inventions arising from research financed by the United States Government may be controlled by the terms of the grants and contracts specified by the government agency pursuant to Federal law.In some cases, the government claims rights to patents resulting from research financed under contracts supported by government agencies.Except as provided by Federal law or by government-supported grants or contracts, or when no patent rights are claimed by the United States Government, or when such rights are waived by the government, patents arising from government sponsored research are controlled by these patent and copyright policies.When a patent arising out of research supported under government grants or contracts is owned by a constituent institution, that institution will, if requested, agree to a non-exclusive royalty-free license for use by the government of such patent. If such a patent is owned by the government, the institution shall be free to use the invention so covered for its own scientific and educational purposes without payment of royalty or other charge, consistent with Federal Law.

University Research Sponsored by Non-Governmental Entities

The University must ensure that its facilities and the results of the work of its employees are applied in a manner which best serves the interests of the public. Likewise, the legitimate interests of a private sponsor who provides financial or other support to research carried out through the constituent institutions must be considered. Constituent institutions should normally reserve the right to ownership of patents on inventions arising out of research supported in whole or in part of grants or contracts with nongovernmental organizations or firms. Contracts or agreements which are entered into between institutions and such organizations or agencies should contain clauses setting forth such a reservation unless deviations therefrom are requested by the sponsor and approved by the institution consistent with the public interest. In the interest of fair treatment to the sponsor in consideration for the sponsor's investment and in the interest of discharging the institution's obligation to the public in the application of its facilities and its employees' time and talent, special provisions may be negotiated by the institution in such non-government sponsored contracts, upon request, provided that the institution retains the right to use the invention for its own research, educational, and service purposes without payments of royalty fees, that the institution requires the sponsor to use due diligence in the commercial use of the invention, and that the institution retains the right freely to publish the results of its research after a reasonable period necessary to protect the right of the parties and to allow for the filing of a patent application.

VII. Publication

A major function of the University of North Carolina is the advancement and dissemination of knowledge.Any practice that unnecessarily restricts the publication of results of scientific work is to be avoided.However, it is recognized that the full development of useful inventions or discoveries may be dependent upon the securing of patent protection that will enable the commercial utilization of the discoveries or inventions.Accordingly, under certain circumstances it may be necessary to delay for a minimum period the publication of results of research.

If a sponsor proposes to support a research effort that will involve a limited exclusive license to use of patents resulting therefrom, the agreement with respect to publication shall include the following. First, the sponsor must agree that the results of the research may be published if desired by the investigators or research workers.Second, in order that patent applications not be jeopardized, the constituent institution, the investigators, and research workers may agree that any proposed publication will be submitted to the sponsor with a notice of intent to submit for publication.If within a period of no more than 90 days from the date of such notice the sponsor fails to request a delay, the investigators, research workers and institution shall be free to proceed immediately with the publication.However, if the sponsor notifies the institution that a delay is desired, the submission of the manuscript to the publisher shall be withheld for the period requested, but in no event shall the total period of delay be longer than one year from the date of the notice of intent to submit for publication mentioned above.Such a period will permit the sponsor to have the necessary patent applications prepared and filed but will not unduly restrict the dissemination of scientific knowledge.

VIII. Avoidance of Conflicts

Conflicts involving patentable inventions and discoveries may arise when a constituent institution's personnel, including students enter into personal consulting agreements with outside firms and organizations.The agreements that business firms wish to have executed by those who are to serve as their consultants frequently contain provisions as to the licensing or assignment of the consultant's inventions and patents.Unless such provisions are narrowly worded, they usually will apply to areas in which the individual's University work lies and thus come into conflict with the obligations owed by the individual to the University under these policies, either with respect to the rights of the constituent institution itself in an invention or with respect to the rights of a sponsor of research in the same field or subject matter.

Prior to signing any consulting agreement that deals with patent rights, trade secrets, or the like, where any University time, facilities, materials or other resources are involved, University personnel and students must bring the proposed agreement to the attention of the appropriate administrators of the constituent institution in accordance with its patent procedures and

either obtain a waiver of University rights or otherwise modify the consulting agreement to conform with these policies, as is determined by the institution in its discretion.

The foregoing requirements are in addition to, and do not eliminate the necessity for, any approval which may be required by the University of North Carolina Policy on External Professional Activity of Faculty and Other Professional Staff.

IX. Duty To Disclose Discoveries And Inventions

All individuals whose discoveries and inventions are covered by these Polices have a duty to disclose their discoveries and inventions promptly in accordance with the patent procedures adopted by each constituent institution pursuant to these policies.The duty to disclose arises as soon as the individual has reason to believe, based on his or her own knowledge or upon information supplied by others, that the discovery or invention may be patentable.Certainty about patentability is not required before a disclosure is made.Individuals shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights, to insure that title in such inventions shall be held by the constituent institution, where these policies indicate the institution shall hold title, or by such other parties as may be appropriate under the circumstances.

X. Patent Committees

The chancellor of each constituent institution of the University of North Carolina shall appoint a patent committee, consisting of no less than three members, one of whom shall be designated by the chancellor to serve as chairman.The committee for the institution shall review and recommend to the chancellor or his delegate the procedures for the implementation of these policies; shall resolve questions of invention ownership that may arise between the institution and its faculty, staff, or students or among individuals; shall recommend to the chancellor the expenditure of the patent royalty fund; and shall make such recommendations as are deemed appropriate to encourage disclosure and assure prompt and expeditious handling, evaluation, and prosecution of patent opportunities.

The chairmen of the institutional patent committees, or their delegates, shall meet as an All-University Patent Committee.The meetings of the All-University Patent Committee shall be at the call of the President of the University or his delegate who shall serve as its chairman.

XI. Patent Management

The chancellor of each constituent institution, or any person designated by him, is authorized to negotiate with reputable agencies or firms to secure for each institution arrangements for patent management, including competent evaluation of invention disclosures, expeditious filing of applications on patents, and licensing and administration of patents.

A constituent institution is authorized to administer its own patent management and licensing program without the use of a patent management agent, if it determines that such arrangement may better serve institutional and public interests. Nothing in this section shall be construed to permit the reduction of the minimum share due an inventor as specified in Section V of these policies.

XII. Copyright Use And Ownership[1]

Preamble

The University of North Carolina, through its constituent institutions, is committed to complying with all applicable laws regarding copyright and patents.The University, as an institution devoted to the creation, discovery, and dissemination of knowledge, supports (1) the responsible, good faith exercise of full fair use rights, as codified in 17 U.S.C. § 107, by faculty, librarians, and staff in furtherance of their teaching, research, and service activities; (2) copyright ownership for creative, non-directed works by faculty, staff, and students and University ownership of directed employment-related works; and (3) protection of ownership rights for creators of works that require a different ownership model.

Copyright Use

To the foregoing stated ends the University shall:

1. Inform and educate the University community about fair use and the application of the four fair use factors as set forth in 17 U.S.C. § 107 and as interpreted in applicable case law.The four fair use factors are:
    a. The character and purpose of the proposed use.
    b. The nature of the work to be used.
    c. The amount and substantiality of the portion to be used.
    d. The effect on the market or potential market for the work
2. Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.
3. Ensure that faculty, EPA and SPA staff, and students have access to assistance in making fair use determinations.

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XVIII. Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.
XIX. Ensure that faculty, EPA and SPA staff, and students have access to assistance in making fair use determinations.

Copyright Ownership

With respect to determining ownership of copyright, the University's policy addresses works by category of copyrightable work (including traditional or non-directed works, directed work, and sponsored or externally contracted works) and by category of author (i.e., faculty, EPA and SPA staff, or student).Ownership of copyrighted subject matter, including software, hinges on which category of work and which category of author pertain to the work at issue.(In this Policy the term "Institution" means a constituent institution or component agency of the multi-campus University of North Carolina at which an author or work's creator is employed or enrolled.)

Copyrightable Works

1. Works by Faculty and EPA Non-Faculty Employees.
    a. Traditional Works or Non-Directed Works:A "traditional work or non-directed work" is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EPA employee resulting from non-directed effort.(Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this policy, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator

    Ownership:Creator of the work, unless it is a directed work, sponsored work requiring University ownership, or a work for hire described in a written agreement between the work's creator and the Institution.(See section 2., below, for the definition of "work for hire;" under the Copyright Act the Institution is deemed the "Author" of a work for hire.)If the Institution is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to the Institution under an Assignment Agreement.The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of the Institution and a mechanism for the sharing of commercial proceeds with the Author.In cases of ownership by the creator of a traditional work, the Institution, where practical, shall be granted a non-exclusive, non-transferable, royalty-free license for its own educational or research use (hereinafter referred to as a "Shop Right").

    b. Traditional Works or Non-Directed Works Involving Exceptional Use of Institutional Resources:"Exceptional use of institutional resources" means institutional support of traditional works with resources of a degree or nature not routinely made available to faculty or other EPA employees in a given area.

    Ownership:Institution.However, upon agreement by the appropriate institutional official or body, the Institution may release or transfer its rights to the work's creator, with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the creator to the Institution if the work produces income for the creator.The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

    c. Directed Works:"Directed works" include works that are specifically funded or created at the direction of the Institution (including, but not limited to, works for hire by faculty or other EPA employees).

    Ownership:Institution.The work's creator, where practical, shall be granted a Shop Right.The Institution may release or transfer its authorship rights to the work's creator under a written agreement negotiated between the creator and the Institution, usually with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator.The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

    d. Sponsored or Externally Contracted Works:A "sponsored or externally contracted work" is any type of copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the Institution and third parties, including sponsored research agreements.

    Ownership:For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the Institution, the creator of the work must disclose the work to the Institution.Provided there is no conflict with a sponsored agreement, the Institution may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the Institution, usually with the Institution retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the Institution if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the Institution or a third party, the creator of the work shall own the work, subject to required disclosure to the Institution where required under institutional policy.In case of ownership by the work's creator, the Institution, if practical, shall be assigned a Shop Right.

2. Works by SPA Staff.

   Most works by SPA staff members are considered to be "Works for Hire."A "work made for hire" is:

   a. a work prepared by an employee within the scope of his or her employment; or
   b. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

      Ownership:Works for hire made by SPA staff shall be owned by the Institution.In special cases, though, the Institution may enter into an agreement in advance that the SPA employee shall own the copyright. In addition, a designated institutional official may waive institutional ownership.

3. Works by Independent Contractors.

   Works by independent contractors are Works for Hire.

   Ownership:Works by independent contractors shall be owned in accordance with the contract under which the work was created.The Institution shall insure that there is a written contract for work by an independent contractor specifying institutional ownership.

4. Works by Students.

   "Student works" are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students.(For purposes of this policy, the term "students" includes teaching, graduate, and research assistants.)

   Ownership:Ownership of the copyright to these works belongs to the student unless the work falls within one of the exceptions described below:

   a. Sponsored or Externally Contracted Works:Ownership shall be in accordance with the section of this policy on sponsored or externally contracted works made by faculty or other EPA employees.
   b. Works for Hire:Student works created by students in the course of their employment with the University shall be considered to fall within the scope of Work for Hire in accordance with the section of this policy on works for hire made by SPA staff.
   c. Classroom, laboratory, and other academic materials generated by students in the instructional process:Students have a limited right to use these materials for personal, educational purposes.Students may not use these materials for commercial gain.

      As provided by the institutional policy or as agreed to mutually, rights in student works may be transferred between the student and the Institution.In such cases, a written Assignment Agreement shall specify the respective rights and obligations of the parties.The parties may also negotiate for joint ownership of such works, with the approval of the appropriate institutional official or body.

      Works Subject to Protection by Both Copyright and Patent Laws

      In cases where an invention or creation is subject to protection under both patent law and copyright law, if the Institution elects to retain title to its patent rights, then the inventor/creator(s) shall assign copyright to the Institution and the Institution shall be compensated in accordance with the royalty provisions of the Institution's patent policy and procedures.

      Administration

      The chief executive officer of each Institution shall designate an administrative office, officer, or unit responsible for implementing this policy.The designated institutional administrative entity shall address various matters covered by this policy, including developing policies and procedures designed to supplement and interpret the ownership aspects of this policy, providing advice regarding ownership of specific works, releasing institutional rights, and accepting an assignment of rights to the Institution from an author or creator of a work.

      Dispute Resolution

      The chief executive officer of each Institution shall designate a dispute resolution mechanism (such as a Copyright Committee or Intellectual Property Committee) for resolving any disputes which may arise among an author, other

creator of a work, a third-party sponsor of a work, and an institutional official or office concerning copyright ownership or other rights.

XX. Service Marks, Trademarks and Trade Secrets

Service marks and trademarks are the property of the constituent institutions, and without express authorization from the chancellor or his designee, no steps shall be taken for securing trademarks or service marks by usage or registration with respect to products resulting from or arising out of research or other activities carried out at a constituent institution or developed with the aid of its facilities or staff, or produced through funds administered by the constituent institution.The institutions are hereby authorized to register such marks as are deemed by that institution to be appropriate and to license the use of such marks, provided that the income from such licensing shall be used to support the research and educational programs of the institution and not accrue to the personal benefit of University personnel.

The use of trade secret agreements to protect discoveries and inventions developed at the constituent institutions may not be consistent with the aims and purposes of the University of North Carolina. Special provisions may be required to protect the free dissemination of students' degree-related work.

XXI. Procedure

The Board of Trustees of each constituent institution shall adopt patent procedures that are consistent with and implement these policies, taking into account the nature and scope of the institution's programs.The institutional patent procedures shall be reviewed and approved by the President or his representative prior to approval by the Trustees.

XXII. Exceptions

Exceptions to the above policies are authorized if approved by the President following a favorable review and recommendation from the pertinent institutional committee or the All-University Patent Committee.Before approving an exception, the President must determine that, on the basis of the evidence available, such exception is in the public interest and is consistent with the University's responsibilities to the public.

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[1] By resolution, the Board of Governors provides the following:

1. The provisions of Section XII are effective at the earlier of the following: the date as of which the institution adopts a new or amended policy to conform to the board's policy; or (2) August 1, 2001.Any copyright dispute over a work created prior to the effective date of an institution's policy shall be resolved under such relevant policies and procedures as had existed immediately prior to the effective date, unless the parties to the dispute mutually agree in writing to abide by the new policy.
2. Nothing in this policy is intended to alter the provisions of *The Code of the University of North Carolina*, Chapter VI:Academic Freedom and Tenure.
3. The President is authorized to establish such supplemental policies or procedures, not inconsistent with the policy, as the President may deem necessary or desirable to implement or administer the policy.This may include provision for review by the Office of the President of policies or procedures intended by University institutions and agencies to implement the policy.

500.2: Adopted 06/10/83, Amended 11/10/00, Amended 02/09/01

500.2.1[R] Regulations for Establishing a Copyright Use and Ownership Policy

During 1999-2000, a University-wide task force, with the active leadership of the Faculty Assembly, worked with the Academic Affairs and Legal Affairs divisions of the Office of the President to develop a policy framework for the administration of copyright within the University of North Carolina.This was a collaborative effort, one that included a University-wide colloquium and extensive review of relevant law and copyright policies now in force at other U.S. colleges and universities.The product of that effort is a copyright policy adopted by the Board of Governors on November 10, 2000.Attached is a checklist to guide each University institution in implementing the policy.

It is expected that in the coming months the Office of the President will provide further resources to the institutions to help administer the copyright policy, notably a statute-based primer on copyright ownership and a statute-based primer on copyright use.For the present, issues of copyright may be addressed either to David Edwards, Senior Associate Counsel, or Betsy Bunting, Associate Vice President for Legal Affairs.

At this time institutions are requested to commence administration of the copyright policy by addressing the attached "Checklist" with proposed institutional responses.The draft of each institution's responses should be forwarded to the Office of the President for review and approval.

[This is a rewrite of Administrative Memorandum #409.]

Checklist to Guide Campuses in Developing Copyright Use and Ownership Policies

1. Designation by the chief executive officer of the Institution of an institutional office, body, or officer to interpret and administer the policy (Administration[1]), specifically, to include:
    a. Education of faculty, staff, and students about the law of "fair use."(Copyright Use, 1.)
    b. Provision to faculty, staff, and students of resources and guidance in the making of fair use determinations.(Copyright Use, 2. and 3.)
    c. Establishment of a policy concerning portability of "shop rights" beyond the Institution.(Copyrightable Works, 1.a., 1.b., 1., 1.d., and 3.)
    d. Definition of "exceptional use of institutional resources" at the Institution.(Copyrightable Works, 1.b.)
    e. Contracting for the terms of transfer, shared ownership, and/or commercialization of copyrighted works at the Institution. (Copyrightable Works, 1.a., 1.b., 1.c., 1.d., 2., and 4.)
    f. Determining the applicability of "work for hire" doctrine and the suitability of waiving that doctrine in individual cases. (Copyrightable Works, 1.a., 1.c., 2., and 4.)
    g. Specifying a policy to identify those instances in which there shall be disclosure to the Institution by the creator of a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the Institution or a third party.(Copyrightable Works, 2.d.)
2. Establishment by the chief executive officer of a copyright dispute resolution mechanism at the Institution, including the determination whether or not there is to be recourse at the Institution beyond the initial dispute forum, such as to the chief executive officer.(Dispute Resolution)

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[1] Parenthetical references are to sections of the "Copyright Use and Ownership Policy," embodied in Section XII of 500.2 of this *Policy Manual*.

500.2.1[R]: Adopted 11/21/00

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 (effectiveJanuary 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 t he 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.

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.

H. The copying is at the instance and inspiration of the individual teacher, and
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 ONAUTHOR-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

201.14Warnings 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. 553 [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 thought 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
