

APPENDIX

Guidelines for the Duplication of Copyrighted Material for Classroom Use

The General Counsel's Office has prepared the following guidelines for the photocopying of copyrighted materials for classroom use. These guidelines attempt to balance the interests of the instructor and his or her students on the one hand and the rights of the copyright owner on the other.

Instructors who wish to make multiple copies of copyrighted material must take the following steps:

1. Determine whether the safe harbor applies. When Congress revised the copyright law in 1976, it took note of a set of guidelines that had been approved by a consortium of publishers and by the American Council on Education for copying for classroom use. These guidelines contain safe harbor provisions that describe copying that may be done without the permission of the copyright owner. A copy of the guidelines is attached for your reference. These guidelines set out a three-pronged test; any copying must meet all three tests (brevity, spontaneity, and cumulative effect) to come within the safe harbor.

If an instructor determines that the proposed copying fits within the safe harbor, then the copying may be done without requesting permission from the copyright owner. However, instructors should bear in mind that the spontaneity test requires them to request permission for that same material if the instructor intends to use that material in a subsequent semester.

If an instructor determines that the proposed copying does not fit within the safe harbor, the instructor **must** request permission from the copyright owner.

2. Request permission from the copyright owner. This must be done in writing. Allowing plenty of time (six to eight weeks minimum) for the copyright owner to respond, write a letter to the copyright owner describing your intended use of the copyrighted material and ask permission to use the material accordingly. A copy of the Association of American Publisher's "how to Request Copyright Permissions" is included herein; this should help you prepare your requests.

Please be aware that the copyright owner may be either the publisher or the author of the material. A close inspection of the material or the larger work containing the material to be copied should reveal the identity of the copyright owner. If you cannot determine who owns the copyright, request permission from both the author and the publisher.

Instructors must be prepared to document the fact that they have requested permission to duplicate each item of copyrighted material.

A request for permission should produce one of the following three responses:

a. Permission Granted -- the copyright owner responds by granting the permission requested. This is the ideal response; instructors should not expect to see it often.

b. Permission granted subject to royalty payment -- more and more copyright owners are granting permission to reproduce their works upon payment of a specified royalty. If you receive such a response and decide to pay the royalty, you must retain copies of all documentation for the transaction. The cost can be passed along to the students as part of the purchase price of the duplicated materials. The instructor should request a letter from the copyright owner acknowledging receipt of the payment and authorizing the instructor to proceed with the duplication. If this response is received and the instructor feels that the requested royalty is unreasonable, please contact the General Counsel's Office to discuss the situation.

c. Permission denied or no response received -- many copyright owners deny all requests to reproduce their material as a matter of course; others may deny your request for other reasons. The fact that a copyright owner does not grant permission to reproduce the material does not necessarily mean that it cannot be reproduced for classroom use. Denial of permission means that the legal justification for the proposed photocopying of copyrighted material would rest on the concept of "fair use" rather than on the grant of permission by the copyright owner or on compliance with the safe harbor. Fair use is defined as the ability of a person other than the copyright owner to use copyrighted material in a reasonable manner without the consent of the copyright owner. What constitutes fair use depends on the facts and circumstances of the use. A copy of the fair use statute is attached for your reference. Reliance on the fair use doctrine means that the copying in question is heading into uncharted legal waters and may subject the University and/or the instructor to liability for copyright infringement. If you have any questions about the fair use doctrine and/or any particular proposed copying, please contact the Office of the General Counsel.

Instructors must make separate requests for each copyrighted work for each school term that the copyrighted materials will be used. Instructors should maintain a file containing all of their correspondence pertaining to their use of copyrighted materials.

3. Include a "Notice of Copyright" on each copyrighted work. This must be done in every case. The notice of copyright includes the word "copyright" or the circled "c," the year of publication, and the name of the copyright owner.

Examples: Copyright 1991 by John A. Smith
(c) 1991 by Random House Publishers

This notice must be typed or handwritten on the first page of each copyrighted work that you wish to have photocopied.

Guidelines for Copying Educational Material

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 student in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- A. The copying meets the test of brevity and spontaneity as defined below; and
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright.

Definitions

Brevity:

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

[Each of the numerical limits stated in "i" and "ii" 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 "poetice 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 in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity:

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

Cumulative Effect:

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations state 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 test and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - a. substitute for the purchase of books, publishers' reprints or periodicals;

- b. be directed by higher authority;
 - c. be repeated with respect to the same item by the same teacher from term to term;
- D. No charge shall be made to the student beyond the actual cost of photocopying.

How to Request Copyright Permission

A federal court ruling reaffirmed the need to obtain permission to use copyrighted materials in college course anthologies. Publishers want to make these materials available to you quickly and inexpensively but they need your cooperation. Whether you request permission yourself or through a college store or copy service, these suggestions will speed the process. Please:

1. Request permission at the same time you order textbooks, the earlier the better in the event your request cannot be granted and you need to substitute other materials. Publishers do not always control rights and need time to research the extent to which permission may be granted.
2. Direct your request to the publisher's Copyrights and Permission Department, not the author. If publishers do not control the rights, they will inform you whom to contact.
3. Include all of the following information in your request:
 - a. author's, editor's, translator's full name(s)
 - b. title, edition and volume number of book or journal
 - c. copyright date
 - d. ISBN for books, ISSN for magazines and journals
 - e. numbers of the exact pages, figures and illustrations
 - f. if you are requesting a chapter or more; both exact chapter(s) and exact page numbers
 - g. number of copies to be made
 - h. whether materials will be used alone or combined with other photocopied materials
 - i. name of college or university
 - j. course name and number
 - k. semester and year in which material will be used
 - l. instructor's full name
4. Request permission whether or not works are in print.
5. Provide your complete address and the name of a contact person and telephone number in case there are any questions.

In many cases, your college store or other service can assist you and/or provide appropriate forms. The publisher's response form will provide the information about payment and fees which are determined by the individual publisher. A booklet, Questions and Answers on Copyright for the Campus Community, is available through most college stores or on request from AAP (Association of American Publishers), 220 East 23rd Street, New York, NY 10010 (212/689-8920).