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Exhibit A—Guidelines for Classroom Copying in Not-for-Profit Educational Institutions

Note to administrator: This warning notice must be printed on heavy paper or other durable material in 18-point or larger type and must be displayed prominently, where it is clearly visible, legible, and comprehensible to a casual observer in the immediate vicinity of the place where reproductions are made or requests for reproduction are accepted.

Note: The guidelines summarized below are provided in full in the [Historical and Revision Notes House Report No. 94-1476¹](#) as the minimum, not maximum, standards of educational fair use under 17 U.S.C. 107. These guidelines are not intended to limit the types of copying permitted under the standards of fair use under judicial decisions, federal copyright law, or other applicable laws. There may be instances in which copying that does not fall within the guidelines stated below may be permitted under the criteria of fair use. An ESC may, with advice of legal counsel, modify these guidelines for use in accordance with board policies and ESC procedures.

Relating to Books and Periodicals

1. Single copying for teachers:

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

2. 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 the copying:

- a. Meets the tests of brevity and spontaneity as defined below;
- b. Meets the cumulative effect test as defined below; and
- c. Each copy includes a notice of copyright.

Definitions

Brevity:

1. 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.
2. 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 ten percent of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in items 1 and 2, above, may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]
3. Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
4. "Special" works: Certain works in poetry, prose, or in "poetic prose" that often combine language with illustrations, that are intended sometimes for children and at other times for a more general audience, and that fall short of 2,500 words in their entirety. Item number 2, 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 ten percent of the words found in the text thereof may be reproduced.

Spontaneity:

1. The copying is at the instance and inspiration of the individual teacher; and
2. 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:

1. The copying of the material is for only one course in the school in which the copies are made.
2. 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.
3. There will not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in items 2 and 3, above, will not apply to current news periodicals and newspapers and current news sections of other periodicals.)

Guidelines for Educational Uses of Music

Permissible uses:

1. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies will be substituted in due course.
2. Multiple copies:
 - a. For academic purposes other than a performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole that would constitute a performable unit such as a section, movement, or aria, but in no case more than ten percent of the whole work. The number of copies will not exceed one copy per student.
 - b. Single copies:

For academic purposes other than a performance, a single copy of an entire performable unit (section, movement, aria, and the like) that is:

 - (1) Confirmed by the copyright proprietor to be out of print, or
 - (2) Unavailable except in a larger work, which may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, are not altered or 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 that may exist in the sound recording.)

Prohibited uses:

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 described above for emergency copying.
4. Copying for the purpose of substituting for the purchase of music, except as described above for emergency copying and for academic purposes.
5. Copying without inclusion of the copyright notice that appears on the printed copy.

Exhibit B—Notice Warning Concerning Copyright Restrictions

[The text below is required content.]

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or 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 in excess of “fair use,” that user may be liable for copyright infringement.

The ESC reserves the right to refuse to make photocopies for anyone requesting photocopying if, in the ESC’s judgment, fulfilling the request would involve violation of copyright law.

[The text below is optional content.]

The person using this equipment is liable for any infringement. The _____ Education Service Center does not authorize the use of this machine for the photocopying or reproduction of copyrighted works.

For general information regarding copyright as applied to the ESC, see Board policy CW, which is available at _____ (*insert location where board policy may be accessed*).

To contact the United States Copyright Office, call 1-877-476-0778.

Exhibit C – Designation of Agent to Receive Notification of Claimed Infringement and Guidelines for Fair Use and Trademark

Note: Additional information regarding an ESC's rights and responsibilities under the [Digital Millennium Copyright Act \(DMCA\)](#)² can be found at the U.S. Copyright Office's website.

Complaints Regarding Copyright Compliance

If a copyright or license owner reasonably believes that the ESC's technology has been used to infringe upon a copyright or license, the owner is encouraged to notify the ESC by contacting the designated agent below.

Designation of Agent to Receive Notice of Claimed Infringement

Pursuant to federal copyright law, the ESC designates the following employee to serve as the ESC's designated agent to receive complaints or notifications about claimed copyright infringement using the ESC's technology, including online services, and to be added to the federal directory of designated agents:

Name of ESC:

Name of Designated Agent:

Physical Street Address (*no P.O. Box*):

Physical Mailing Address (*if different from above*):

Phone Number:

Email address of Designated Agent:

First and Last Name, Telephone Number, and Email Address of Primary ESC Contact Person:

First and Last Name, Telephone Number, and Email Address of Secondary ESC Contact Person (*preferably not the same as the designated agent or primary contact*):

Federal Directory

The _____ (*position title, e.g., Executive Director, registered agent named above, another ESC employee, or the like*) will:

Ensure that the ESC's registration with the U.S. Copyright Office's federal online directory of designated agents (DMCA Designated Agent Directory) is timely and properly completed, maintained, amended, and renewed, including the payment of necessary fees;

Ensure that the contact information of the ESC's designated agent is made available on the ESC's website and made available to the public; and

If an ESC department or third-party entity or individual is designated as the agent instead of an ESC employee, ensure that such responsibilities are fulfilled on behalf of the ESC in a timely and compliant manner.

Fair Use

The following guidelines are provided to assist in determining whether a potential use can be considered fair use by balancing all of the four factors below, prescribed in law, and the accompanying considerations:

1. Purpose and Character of Use:
 - a. Nonprofit, educational, or personal use – more likely to be considered fair use.
 - b. Criticism, commentary, news reporting, parody, otherwise “transformative” use – more likely to be considered fair use, particularly if new work significantly alters the original, appeals to a different audience, or is used for another purpose from the original.
 - c. Commercial use – more likely to not be considered fair use if new work is simply a duplication of the original.
2. Nature of the Copyrighted Work to be Used:
 - a. Fact, published – more likely to be considered fair use.
 - b. Mixture of fact and artistic expression – requires balance of considerations at item a, above, and item c, below. For example, if the work contains more fact than artistic expression, then the balance tips in favor of the use being considered fair use. However, using the same example, if a significant amount of facts from the work was used and the work was unpublished, then the balance tips in favor of the use not being considered fair use.
 - c. Artistic, unpublished – more likely to not be considered fair use if work consists of artistic expression. Unpublished works are not likely to be considered fair use; however, a copyrighted work that was published but is no longer in print is likely to be considered fair use.
3. Amount of Copyrighted Work to be Used:
 - a. Small – more likely considered fair use, but must be balanced with preceding factors and considerations. Even if a small portion of the original work was used, if that portion is the “heart” or “essence” of the original, then the use is less likely to be considered fair use.

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- b. More than a small amount – the more used, the less likely to be considered fair use. If the amount used exceeds reasonable expectation, or approximately 50 percent, then the use is more likely to not be considered fair use.
4. Effect of Use on the Potential Market for the Copyrighted Work:
 - a. Competes with (takes sales away from) the original – more likely to not be considered fair use.
 - b. Avoids payment for permission (royalties) in established permissions market to use original – more likely to not be considered fair use.

Display of Warning Notice

The _____ (*position title, e.g., Executive Director or ESC employee responsible for ESC resources subject to copyright*) will prominently display the required notice concerning copyright restrictions on all reproducing equipment in locations where use of reproducing equipment is unsupervised.

The ESC may also place the warning notice on the ESC's request for information form, if any, and at other locations as determined by the ESC to be helpful in reducing copyright infringement or piracy.

Form and Manner of Use

The warning notice must be printed on heavy paper or other durable material in 18-point or larger type and must be displayed prominently, where it is clearly visible, legible, and comprehensible to a casual observer in the immediate vicinity of the place where reproductions are made or requests for reproduction are accepted.

Trademarks

Public use of ESC trademarks will be in accordance with Board policy and the guidelines on content described below.

Limitations on Content

ESC trademarks may not be used for purposes or on materials that:

1. Are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. Endorse actions endangering the health or safety of students.
3. Promote illegal use of drugs, alcohol, or other controlled substances.
4. Violate the intellectual property rights, privacy rights, or other rights of another person.
5. Defame others.
6. Advocate imminent lawless or disruptive action likely to incite or produce such action.

7. Attack or create hostility or violence against others.
8. Contain content aimed at creating hostility and violence.
9. Materially and substantially interfere with school activities or the rights of others.

¹ Historical and Revision Notes House Report No. 94–1476: <https://us-code.house.gov/view.xhtml?req=granuleid:USC-prelim-title17-section107&num=0&edition=prelim>

² Digital Millennium Copyright Act (DMCA): <https://copyright.gov/dmca/?locr=eanco>