



State University of New York

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**Memorandum to Presidents**

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OFFICE OF THE  
PROVOST

Date: December 30, 1977

Vol.77 No.22

From: Office of the University Counsel and  
Vice Chancellor for Legal Affairs

Subject: The New Copyright Law

The Copyright Act of 1976 (Public Law 94-553, Title 17 of the U. S. Code), which takes effect on January 1, 1978, is already the subject of much inquiry and concern. The Act is the product of many years of effort by creators, owners and users of intellectual property and many Congressional committees. The Act attempts to resolve the complex issues of copyright law through a series of compromise provisions. The new copyright law affects many aspects of University operations: copy centers, computer centers, libraries, radio stations, educational communication centers, the classroom and the concert halls. The provisions of the new law are detailed and confusing to lawyer and layman alike. Clear and concise answers to a variety of questions about the meaning of the Act are not available. The attached materials, however, will provide some assistance.

Attachment I

This attachment, published by the Copyright Office (Circular R 99), summarizes some of the highlights of the new statute. Note that federal copyright protection is now extended to unpublished works, as well as published works. Copyright protection is now extended generally to the life of the author plus 50 years.

Attachment II

This attachment, also published by the Copyright Office (Circular R 21), is an attempt to provide objective information for librarians and teachers concerning various provisions and limitations of the new law. Please note the following information in this document:

A. Rights in Copyrighted Works. The five fundamental rights of copyright owners in the new law are the rights (1) to reproduce the work, (2) to prepare derivative works, (3) to distribute

copies publicly, (4) to perform the work publicly and (5) to display the work publicly. Generally, all uses of copyrighted materials for any of these purposes require the permission of the copyright owner.

B. Fair Use. The law codifies the judicially-developed fair use doctrine which allows reasonable use of copyrighted material without permission from, or payment to, a copyright owner. Whether a particular use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research constitutes a "fair use" is determined by factors which include:

- (1) the purpose and character of the use, including whether such use 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.

C. Guidelines. To provide guidance concerning fair use and classroom copying from books and periodicals, as well as educational uses of music, various educational organizations have negotiated "agreements" with copyright owners on additional guidelines beyond the statutory fair use definition. Although these guidelines are not part of the statute itself, they have been included in the Congressional reports accompanying the copyright bill and thus will be considered part of the Act's legislative history.

The Guidelines for Classroom Copying in Not-For-Profit Educational Institutions, for example, provide minimum standards of educational fair use for single and multiple copying, subject to various tests of brevity, spontaneity and cumulative effect. The Guidelines for Educational Uses of Music similarly suggest minimum standards of fair use in the making of copies of musical works. Most important is the statement included with both sets of guidelines that they were "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..., may nonetheless be permitted under the criteria of fair use" (emphasis supplied).

D. Library copying. In addition to any use which would be considered a fair use, certain types of copying by libraries are exempt from infringement, subject to additional limitations and conditions, in Section 108 of the statute. In general, a library may reproduce and distribute not more than one copy of (1) an unpublished work for archival preservation, (2) a work for replacement purposes if an unused replacement cannot be obtained at a fair price, (3) articles and small excerpts, and (4) out-of-print works which cannot be obtained at a fair price. In the last two categories it is required that the copy become the property of the user; that the library have no notice that the copy would be used for any purposes other than private study, scholarship, or research; and that the library display prominently at the order desk; and on the order form, a required warning of copyright (see Attachment III).

These special provisions authorizing limited library copying also permit the making of single copies for purposes of inter-library loans, provided that such copies are not in such aggregate quantities as to substitute for subscriptions or purchases. The Guidelines for the Proviso of Subsection 108(g)(2) (Photocopying-Interlibrary Arrangements) provide some assistance in the definition of these limitations.

A library is not responsible for the unsupervised use of reproducing equipment located on its premises, provided that a notice is displayed that "the making of a copy may be subject to the copyright law." (This latter notice should not be confused with the required warning of copyright to be displayed on library order forms or at an order desk as prescribed by the Register of Copyrights, Attachment III).

E. Remission of statutory damages. Infringement of copyright subjects the infringer to actual and statutory (fixed) damages, among other penalties. The new copyright law provides, however, that statutory damages will be remitted in the special situation of teachers, librarians and public broadcasters, and their employer-institutions, where such persons or institutions have "infringed" copyright in the honest belief that what they were doing constituted fair use.

#### Attachment III

This document is a copy of the announcement and text of the final regulation of the Register of Copyrights specifying the required warning of copyright for use by libraries and archives, in accordance with section 108 of the Copyright Act. The use of the "Display Warning of Copyright" and the "Order Warning of Copyright" is detailed as to content, type and location. Libraries

are required to display these warnings as prescribed (Section 201.14 of Title 37, Code of Federal Regulations).

As noted above, these warning notices should not be confused with the notice required to be placed on photocopy machines not under the control of a library but placed on its premises, or the notices of copyright on copies made by a library for users. No specific language is prescribed by regulation for these latter two notices. A committee of the American Library Association has suggested, however, that the notice on an unsupervised copying machine might read: "Notice: The copyright law of the United States (Title 17, U. S. Code) governs the making of copies of any copyrighted material. The person using this equipment is liable for any infringement." Similarly, the notice on a copy made for a library user might read: "Notice: This material may be protected by copyright law (Title 17, U. S. Code)."

#### Attachment IV

This attachment contains the text of Sections 110, 112, 117 and 118 of the new law. Among its provisions these sections deal with a variety of uses of copyrighted material and the exemptions provided for certain instructional activities.

A. Exemption of Certain Performances and Displays. The general rights of a copyright owner to control the public performance and display of a copyrighted work are subject to specific limitations in Section 110 of the Act, which include the following:

1. "Face-to-face teaching activities" and instructional broadcasting: The exemptions for "face-to-face teaching activities" and instructional broadcasting are intended to cover all of the various methods by which performances or displays in the course of systematic instruction take place.

Covering all types of copyrighted works, the exemption for a "face-to-face teaching activity" extends to a performance or display, excluding open or closed-circuit transmission, "by instructors or pupils within a nonprofit educational institution in a classroom or similar place devoted to instruction."

Provided that the conditions of this section are met, teachers or students, for example, may "read aloud from copyrighted text material, act out a drama, play or

sing a musical work, perform a motion picture or filmstrip, or display text or pictorial material to the class by means of a projector."

The exemption for instructional broadcasting, however, applies only to performance of a nondramatic literary or musical work or display of a work, if (a) the performance is a regular part of systematic instructional activities, (b) the performance or display is directly related and of natural assistance to the teaching content of the transmission and (c) the transmission is made primarily for reception in classroom or "similar places" of instruction.

Permission is required of a copyright owner for the performance of a dramatic work, of opera or musical comedy or of a motion picture. It should be noted that where the conditions are met for the limited exemption provided for instructional broadcasting, a statutory right also exists for the institution to make ephemeral recordings (copies of a work made for purposes of a later transmission) of not more than 30 copies of the transmission and to use them for not more than seven years.

2. Performances of nondramatic literary and musical works: Generally, the noncommercial performance of a nondramatic literary or musical work other than in a transmission to the public is exempt from copyright liability if no compensation is paid to its performers, promoters or organizers. To be exempt such a performance is additionally subject to the condition that no direct or indirect admission charge is made, or if a charge is so made, the net proceeds are for exclusively educational, religious or charitable purposes. Where proceeds are derived, furthermore, the copyright owner of the work being performed is given an opportunity to prevent the performance by serving a "notice of objection" at least seven days in advance of the performance, in accordance with regulations which the Register of Copyrights will promulgate.

B. Computer Systems. In the major area of computer uses of copyrighted works the new Copyright Act provides only limited guidance on whether "input" or "output" constitutes infringement. The purpose of Section 117 of the Act is to preserve the status quo pending the findings and recommendations of the National Commission on New Technological Uses of Copyrighted Works (CONTU), which currently is under a direction to report to the Congress during 1978.

Subject to Congressional action the Act merely continues the old law as it existed on December 31, 1977, the day before the effective date of the new law. This moratorium extends only to the exclusive rights of a copyright owner with respect to computer uses of copyrighted works, since there is some indication that the new law includes computer programs or "software" within the subject matter of copyright.

C. Noncommercial broadcasting. Although the Copyright Act encourages copyright owners and public broadcasters to reach voluntary private agreements, a compulsory license, with reasonable terms and rates to be established by the Copyright Royalty Tribunal, may be obtained by public broadcasters under Section 118 for: (1) performances or displays of published nondramatic musical works and published pictorial, sculptural and graphic works in the course of a noncommercial educational broadcast transmission; (2) production, reproduction and distribution of copies or phonorecords of such programs; and (3) simultaneous off-air videotaping and performance or display of such transmissions by educational institutions for face-to-face teaching purposes for a period of seven days from the transmission.

It should be noted that this last activity would permit a limited off-air videotaping license for colleges and universities once the compulsory license procedures are established. Materials excluded from any compulsory license are nondramatic literary works, plays, operas, ballets, motion pictures and other audiovisual works. The general problem of off-air taping for nonprofit classroom use of copyrighted audiovisual works incorporated in radio and television broadcasts was left unresolved in the new statute except for the general application of the fair use doctrine and a limited right granted to libraries to make off-air videotape recordings of news-casts for limited distribution to scholars and researchers.

#### Attachment V

Based on an analysis of the exemption provided for performances of nondramatic literary and musical works, the American Council on Education and the National Association of College and University Business Officers have advised colleges and universities that they will be liable as owners of facilities for royalty payments on all music played where a performer is compensated. In addition, the three music performing rights societies (the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc.) maintain that institutions are also liable

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for royalties on music performed where there is an admission charge to the event. Although this latter view has been vigorously opposed, ACE and NACUBO, in coordination with the Association of College Unions-International, National Entertainment and Campus Activities Association, Association of College, University and Community Arts Administrators, Inc. and National Association of Student Personnel Officers, have been attempting to negotiate music performance licenses with each of the rights societies which would protect colleges from copyright infringement actions.

Attachment V is a copy of the latest joint advisory from ACE and NACUBO on the progress of negotiations with the three music performing rights societies (ASCAP, BMI and SESAC). Since negotiations are continuing in order to formulate model licensing agreements, we have been advised that the three performing rights societies have agreed to a moratorium on the bringing of any infringement actions for violation of music performance rights during January 1978.

Once standard agreements and fees are negotiated at the national level with each of the three societies, representatives of the Office of University Counsel will work directly with ACE staff and others to finalize documents which can be used by higher education institutions. Within State University, furthermore, several issues will still need to be resolved including the matter of whether such licenses will cover all music performances held in University facilities under the auspices of the University, a student organization or an auxiliary service corporation (FSA), or whether separate licenses will be necessary for each principal sponsor. A committee of business officers has been formed to assist in this analysis as well as review the potential administrative accounting obligations of these licenses.

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This Memorandum, obviously is not a complete guide to every provision or interpretation of the new copyright law. We hope, however, to prepare additional memoranda as clarifications become available, particularly on the subject of "copyright clearance" procedures for uses of copyrighted material where permission may be necessary. Several briefing sessions have been conducted, and several more will be scheduled, with representative groups within State University in order to identify and review significant areas of concern. In this regard we request that specific problems be directed to our office as they arise.

*Walter J. Relihan, Jr.*

Walter J. Relihan, Jr.

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This memorandum addressed to:

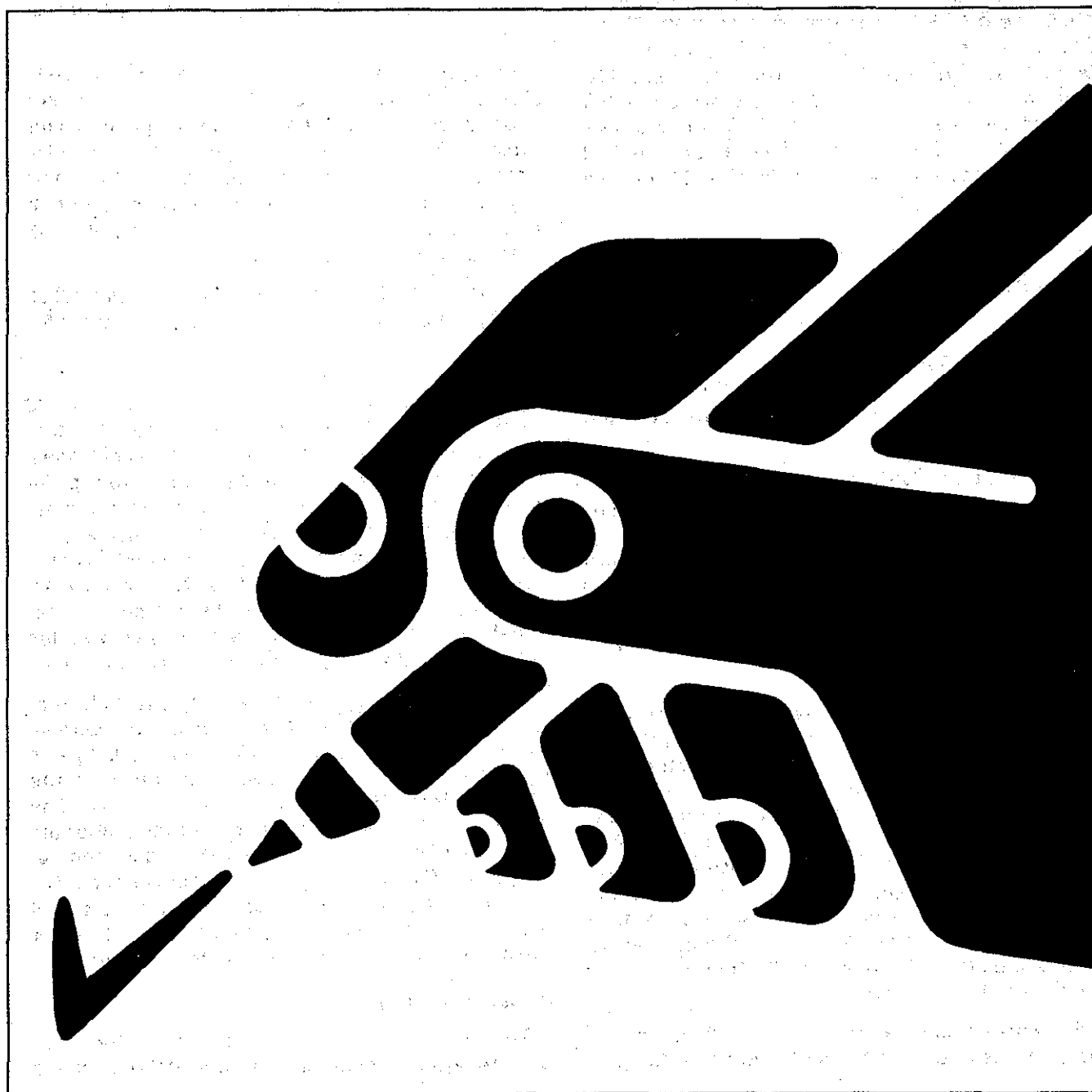
Presidents, State-operated campuses

Copies for information sent to:

Presidents, Community Colleges  
Deans, Statutory Colleges  
President Rose  
Vice President Cook

**Circular** **R 99**

**Highlights  
of the New  
Copyright  
Law**



# Copyright Revision Bill Becomes Law: Most Provisions To Take Effect January 1, 1978

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## INTRODUCTION

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President Gerald R. Ford signed, on October 19, 1976, the bill for the general revision of the United States copyright law, which became Public Law 94-553 (90 Stat. 2541). The new statute specifies that, with particular exceptions, its provisions are to enter into force on **January 1, 1978**. The new law will supersede the copyright act of 1909, as amended, which will however remain in force until the new enactment takes effect.

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## HIGHLIGHTS

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Some of the highlights of the new statute are listed below. For detailed information about specific changes or new provisions, write to the Copyright Office.

### Single National System

Instead of the present dual system of protecting works under the common law before they are published and under the Federal statute after publication, the new law will establish a single system of statutory protection for all copyrightable works, whether published or unpublished.

### Duration of Copyright

For works already under statutory protection, the new law retains the present term of copyright of 28 years from first publication (or from registration in some cases), renewable by certain persons for a second period of protection, but it increases the length of the second period to 47 years. Copyrights in their first term **must still be renewed** to receive the full new maximum term of 75 years, but copyrights in their second term between December 31, 1976 and December 31, 1977, are automatically extended up to the maximum of 75 years without the need for further renewal.

For works created after January 1, 1978, the new law provides a term lasting for the author's life, plus

an additional 50 years after the author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the new term will be 75 years from publication or 100 years from creation, whichever is shorter.

For unpublished works that are already in existence on January 1, 1978, but that are not protected by statutory copyright and have not yet gone into the public domain, the new Act will generally provide automatic Federal copyright protection for the same life-plus-50 or 75/100-year terms prescribed for new works. Special dates of termination are provided for copyrights in older works of this sort.

The new Act does not restore copyright protection for any work that has gone into the public domain.

### Termination of Transfers

Under the present law, after the first term of 28 years the renewal copyright reverts in certain situations to the author or other specified beneficiaries. The new law drops the renewal feature except for works already in their first term of statutory protection when the new law takes effect. Instead, for transfers of rights made by an author or certain of the author's heirs after January 1, 1978, the new Act generally permits the author or certain heirs to terminate the transfer after 35 years by serving written notice on the transferee within specified time limits.

For works already under statutory copyright protection, a similar right of termination is provided with respect to transfers covering the newly-added years extending the present maximum term of the copyright from 56 to 75 years. Within certain time limits, an author or specified heirs of the author are generally entitled to file a notice terminating the author's transfers covering any part of the period (usually 19 years) that has now been added to the end of the second term of copyright in a work already under protection when the new law comes into effect.

### Government Publications

The new law continues the prohibition in the present law against copyright in "publications of the

United States Government" but clarifies its scope by defining works covered by the prohibition as those prepared by an officer or employee of the U.S. Government as part of that person's official duties.

#### **Fair Use**

The new law adds a provision to the statute specifically recognizing the principle of "fair use" as a limitation on the exclusive rights of copyright owners, and indicates factors to be considered in determining whether particular uses fall within this category.

#### **Reproduction by Libraries and Archives**

In addition to the provision for "fair use," the new law specifies circumstances under which the making or distribution of single copies of works by libraries and archives for noncommercial purposes do not constitute a copyright infringement.

#### **Copyright Royalty Tribunal**

The new law creates a Copyright Royalty Tribunal whose purpose will be to determine whether copyright royalty rates, in certain categories where such rates are established in the law, are reasonable and, if not, to adjust them; it will also in certain circumstances determine the distribution of those statutory royalty fees deposited with the Register of Copyrights.

#### **Sound Recordings**

The new law retains the provisions added to the present copyright law in 1972, which accord protection against the unauthorized duplication of sound recordings. The new law does not create a performance right for sound recordings as such.

#### **Recording Rights in Music**

The new law makes a number of changes in the present system providing compulsory licensing for the recording of music. Among other things it raises the statutory royalty from the present rate of 2 cents to a rate of 2 and  $\frac{3}{4}$  cents or  $\frac{1}{2}$  cent per minute of playing time, whichever amount is larger.

#### **Exempt Performances**

The new law removes the present general exemption of public performance of nondramatic literary and musical works where the performance is not "for

profit." Instead, it provides several specific exemptions for certain types of nonprofit uses, including performances in classrooms and instructional broadcasting. The law also gives broadcasting organizations a limited privilege of making "ephemeral recordings" of their broadcasts.

#### **Public Broadcasting**

Under the new Act, noncommercial transmissions by public broadcasters of published musical and graphic works will be subject to a compulsory license. Copyright owners and public broadcasting entities that do not reach voluntary agreement will be subject to the terms and rates prescribed by the Copyright Royalty Tribunal.

#### **Jukebox Exemption**

The new law removes the present exemption for performances of copyrighted music by jukeboxes. It will substitute a system of compulsory licenses based upon the payment by jukebox operators of an annual royalty fee to the Register of Copyrights for later distribution by the Copyright Royalty Tribunal to the copyright owners.

#### **Cable Television**

The new law provides for the payment, under a system of compulsory licensing, of certain royalties for the secondary transmission of copyrighted works on cable television systems (CATV). The amounts are to be paid to the Register of Copyrights for later distribution to the copyright owners by the Copyright Royalty Tribunal.

#### **Notice of Copyright**

The old law now requires, as a mandatory condition of copyright protection, that the published copies of a work bear a copyright notice. The new enactment calls for a notice on published copies, but omission or errors will not immediately result in forfeiture of the copyright, and can be corrected within certain time limits. Innocent infringers misled by the omission or error will be shielded from liability.

#### **Deposit and Registration**

As under the present law, registration will not be a condition of copyright protection but will be a prereq-

uisite to an infringement suit. Subject to certain exceptions, the remedies of statutory damages and attorney's fees will not be available for infringements occurring before registration. Copies or phonorecords of works published with the notice of copyright that are not registered are required to be deposited for the collections of the Library of Congress, not as a condition of copyright protection, but under provisions of the law making the copyright owner subject to certain penalties for failure to deposit after a demand by the Register of Copyrights.

### **Manufacturing Clause**

Certain works must now be manufactured in the United States to have copyright protection here. The new Act would terminate this requirement completely after July 1, 1982. For the period between January 1, 1978 and July 1, 1982, it makes several modifications that will narrow the coverage of the manufacturing clause, will permit the importation of 2,000 copies manufactured abroad instead of the present limit of 1,500 copies, and will equate manufacture in Canada with manufacture in the United States.

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### **BACKGROUND**

The present movement for general revision of the copyright law began in 1955 with a program that produced, under the supervision of the Copyright Office, a series of 35 extensive studies of major copyright problems. This was followed by a report of the Register of Copyrights on general revision in 1961, by the preparation in the Copyright Office of a preliminary proposed draft bill, and by a series of meetings with a Panel of Consultants consisting of copyright experts, the majority of them from outside the Government. Following a supplementary report by the Register and a bill introduced in Congress primarily for consideration and comment, the first legislative hearings were held before a subcommittee of the House Judiciary Committee on the basis of a bill introduced in 1965. Also in the same year a companion bill was introduced in the Senate.

In 1967, after the subcommittee had held extensive hearings, the House of Representatives passed a revision bill whose major features were similar to the bill just enacted.

There followed another series of extensive hearings before a subcommittee of the Senate Judiciary Committee but, owing chiefly to an extended impasse on the complex and controversial subject of cable television, the revision bill was prevented from reaching the Senate floor.

Indeed it was not until 1974 that the copyright revision bill was enacted by the Senate. However, that bill, although in its general terms the same as the measure approved by the House in 1967, was different in a number of particulars. In February 1976 the Senate again passed the bill in essentially the same form as the one it had previously passed. Thereafter the House, following further hearings and consideration by the Judiciary subcommittee, passed the bill on September 22, 1976. There followed a meeting of a conference committee of the two Houses, which resolved the differences between the two bills and reported a single version that was enacted by each body and presented to the President.

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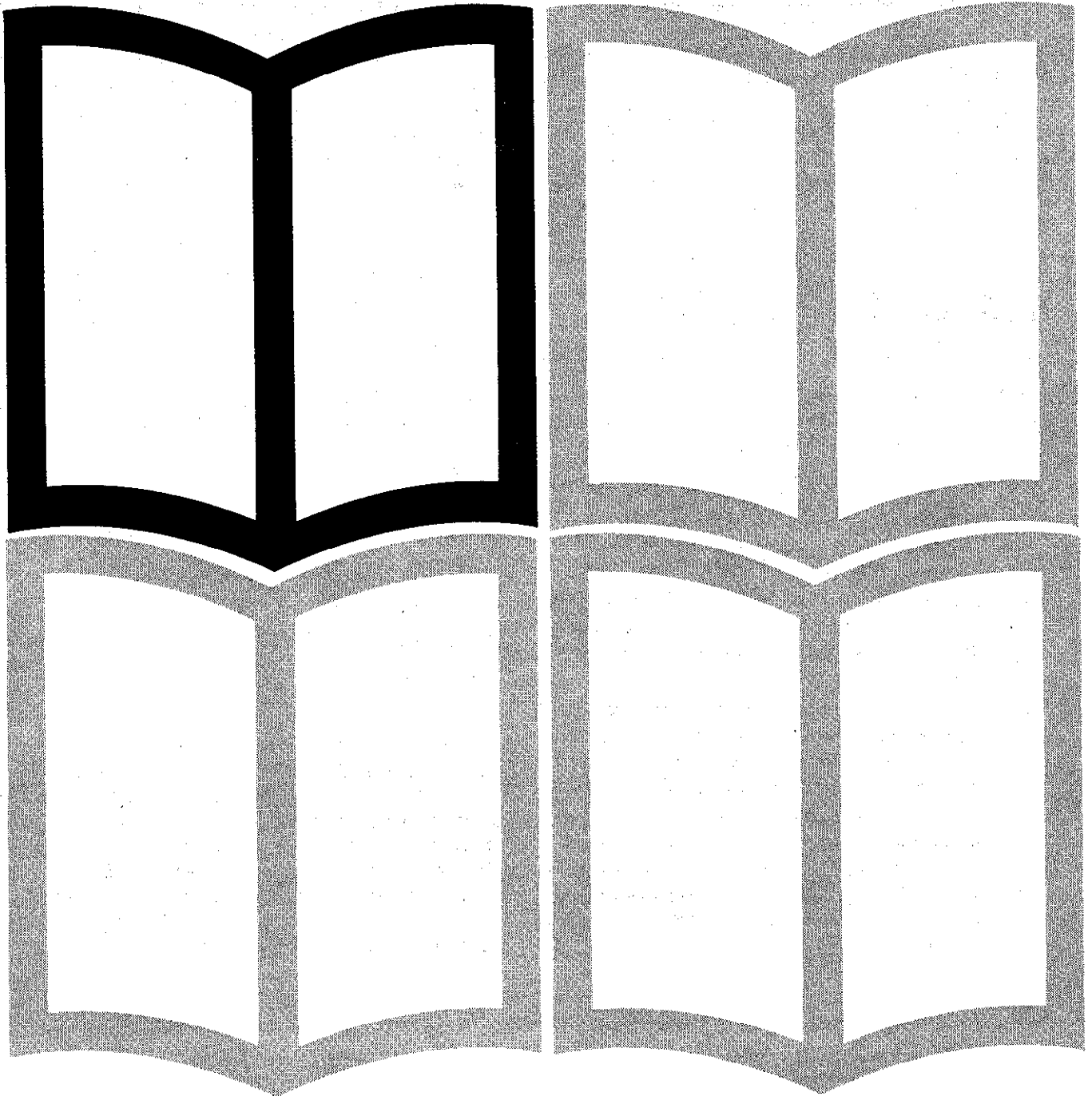
### **FURTHER INFORMATION**

During the period before January 1, 1978, the Copyright Office will prepare regulations in accordance with the new statute and will also revise its application forms, instructions, and other printed matter to meet the needs under the new law. In addition, the Office plans to hold extensive meetings with interested parties in order to make the transition from the old law to the new as smooth and efficient as possible.

Additional copies of the new statute are available free of charge by writing to the Copyright Office, Library of Congress, Washington, D.C. 20559. You may also have your name added to the Copyright Office Mailing List by sending a written request to the Copyright Office.

**Copyright  
and the  
Librarian**

**Circular  
R21**



# Copyright and the Librarian

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## SECTIONS OF THE NEW COPYRIGHT LAW OF MOST INTEREST TO LIBRARIANS

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This circular has been published in an attempt to satisfy many requests by librarians and teachers for information concerning responsibilities, obligations, and limitations under P.L. 94-553 (90 Stat. 2541), the new copyright law. Pertinent sections of the new law, plus minimum standards of educational fair use for books, periodicals, and music, and guidelines on interlibrary arrangements for photocopying adopted by the National Commission on New Technological Uses of Copyrighted Works (CONTU). Additional material from other sources will be added in subsequent revisions of this circular.

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## SECTION 106: EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS—PUBLIC LAW 94-553

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Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

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## SECTION 107: LIMITATIONS ON EXCLUSIVE RIGHTS: FAIR USE—PUBLIC LAW 94-553

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Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom 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 use 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.

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## CLASSROOM GUIDELINES \*

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The fair use provision of the new law is, of necessity, general and is not susceptible to either precise definition or automatic application. Each case must be considered and decided on its own merit. To provide more guidance for classroom teachers and other educators, representatives of publishers, authors, and the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision developed some guidelines.

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**AGREEMENT ON GUIDELINES FOR  
CLASSROOM COPYING IN NOT-FOR-PROFIT  
EDUCATIONAL INSTITUTIONS WITH RESPECT  
TO BOOKS AND PERIODICALS \***

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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.

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**GUIDELINES**

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**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.

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**DEFINITIONS:**

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**Brevity:**

- 1. Poetry: (a) A complete poem if less than 250 words and if printed or 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 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "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" 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 "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 10% 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 shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "2" and "3" 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:**

1. substitute for the purchase of books, publisher's reprints or periodicals;
  2. be directed by higher authority;
  3. 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.

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## **GUIDELINES FOR EDUCATIONAL USES OF MUSIC\*\***

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Representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music and the Ad Hoc Committee on Copyright Revision developed the following:

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 purpose 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. Permissible Uses**

- A. 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.

- B. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than (10%) of the whole work. The number of copies shall not exceed one copy per pupil.
- C. 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.
- D. A single copy of recordings of performance by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- E. 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.)

## II. Prohibitions

- A. Copying to create or replace or substitute for anthologies, compilations or collective works.
- B. 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.
- C. Copying for the purpose of performance, except as in I.A. above.
- D. Copying for the purpose of substituting for type purchase of music, except as in I.A. and I.B. above.

- E. Copying without inclusion of the copyright notice which appears on the printed copy.

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## SECTION 108. LIMITATIONS ON EXCLUSIVE RIGHTS: REPRODUCTION BY LIBRARIES AND ARCHIVES—PUBLIC LAW 94-553

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- (a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—
  - (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
  - (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
  - (3) the reproduction or distribution of the work includes a notice of copyright.
- (b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.
- (c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an

unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
- (2) the library or archives 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.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
- (2) the library or archives 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.

(f) Nothing in this section—

- (1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;
- (2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;
- (3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or
- (4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

- (1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

- (2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.
- (h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).
- (i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

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**CONTU GUIDELINES FOR INTERLIBRARY ARRANGEMENTS—CONFERENCE REPORT, 94-1733, PHOTOCOPYING—INTERLIBRARY ARRANGEMENTS**

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**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 phonorecords 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 offices 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 five 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 five 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)—Conference Report,  
94-1733**

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:
  - (a) 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 five 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 five 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]".
  - (b) 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 phonorecords 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—
  - (a) shall have in force or shall have entered an order for a subscription to a periodical, or
  - (b) has within its collection, or shall have entered an order for, a copy or phonorecord 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 fulfill-

ment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord 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 phonorecords 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 five years from the effective date of this bill.

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108(f) (3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108(a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

Another point of interpretation involves the meaning of "indirect commercial advantage," as used in section 108(a) (1), in the case of libraries or archival

collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

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**SECTION 504(c)(2). STATUTORY DAMAGES—PUBLIC LAW 94-553**

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- (2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than

\$50,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$100. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

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\* As appeared in House Report No. 94-1476, as corrected in the *Congressional Record* (daily edition), Volume 122, Number 143, September 21, 1976, p. H10727.

\*\* As appeared in House Report No. 94-1476, as amended in the *Congressional Record* (daily edition), Volume 122, Number 144, September 22, 1976, p. H10875.

# Announcement

from the Copyright Office, Library of Congress, Washington, D.C. 20559

## FINAL REGULATION

### WARNING OF COPYRIGHT FOR USE BY LIBRARIES AND ARCHIVES

The following excerpt is taken from Volume 42, No. 221 of the Federal Register for Wednesday, November 16, 1977 (pp. 59264-5).

#### [ 1410-03 ]

Title 37—Patents, Trademarks, and Copyrights

#### CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 77-5]

#### PART 201—GENERAL PROVISIONS

#### Warning of Copyright for Use by Libraries and Archives

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulation.

**SUMMARY:** This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a new regulation pertaining to the use by libraries and archives of certain warnings of copyright in connection with their photo-duplication and related activities. The regulation is adopted to implement sections 108(d)(2) and 108(e)(2) of the Act for General Revision of the Copyright Law. The effect of the regulation is to prescribe the content, form, and manner of use of the warnings of copyright identified in those sections.

**EFFECTIVE DATE:** January 1, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

**SUPPLEMENTARY INFORMATION:** Sections 108(d) and 108(e) of the first section of Pub. L. 94-553 (90 Stat. 2541) set forth conditions under which specified libraries and archives, or their employees acting within the scope of their employment, may make and distribute single copies and phonorecords of certain copyrighted works, or parts of works, without the consent of the copyright owner. Among other conditions specified in the Act, the library or archive must "display prominently, at the place where

orders (for copies or phonorecords) are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation."

On March 30, 1977, we published in the FEDERAL REGISTER (42 FR 16838) an Advance Notice of Proposed Rulemaking, inviting public comment to assist the Office in considering alternative forms of warning. After considering the comments received in response to the Advance Notice, on August 17, 1977 we published in the FEDERAL REGISTER (42 FR 41387) a Notice of Proposed Rulemaking to add a new § 201.14 to the regulations of the Copyright Office.

Twelve initial and reply comments were received in response to the Notice of Proposed Rulemaking. While most comments received recommended some modification of the proposed regulation, several suggestions were technical in nature or sought clarification of the proposed language. After careful consideration, we have decided to promulgate proposed § 201.14 with few substantive changes. A discussion of the major comments follows.

1. *The short form of warning.* In the proposed rulemaking, we noted that the primary purpose of the warning is to caution a user who has acquired a copy from a library or archives under section 108 as to that users' responsibilities under the copyright law. We specifically invited comment upon our proposal for a short warning, rather than an extensive one incorporating the numerous conditions governing the library's and archive's own obligations under paragraphs (a), (d), (e), and (g) of section 108. Although one comment proposed expanding the warning in significant detail, we have decided to adhere to our original conclusion that the "warning" should be precisely that: a brief, cautionary statement alerting the user that the making of a reproduction by a library or ar-

chive, and the subsequent use of the reproduction, are subject to the copyright law. Such a warning is an inappropriate device to set out accurately or meaningfully all of the institutional limitations and requirements of § 108.

2. *Conditions under which photocopies or other reproductions can be furnished; use of reproductions.* A number of comments raised questions concerning the second paragraph in the text of the proposed warning, which read:

Photocopies or other reproductions can be furnished only under certain conditions, if they will be used solely for private study, scholarship, or research. Use of the reproduction for other purposes may make the user liable for copyright infringement.

Several questions centered around uncertainty as to whether the phrase "certain conditions" in the first sentence referred to use "for private study, scholarship, or research", or suggested additional statutory conditions not specified in the warning itself (namely, those in paragraphs (a), (d), (e), and (g) of section 108, referred to earlier). This latter interpretation is correct and the final regulation has been revised to make this clear.

A number of comments also questioned the failure to include a reference either generally to "fair use" or to certain illustrative usages set out in section 107 of the copyright law (criticism, comment, news reporting, and teaching). Since the test of user liability under section 108 (f)(2), both for request for, and later uses of, reproductions made under section 108(d) is activity which exceeds the limits of "fair use" under section 107, and not solely use for purposes "other than private study, scholarship, or research", we have also revised the second sentence of the above-quoted paragraph.

\*Error; line should read: "in the FEDERAL REGISTER (42 FR 41437)"

3. *Other issues.* Several comments objected to the proposed specification of type sizes and cardboard stock. However, these specifications are helpful in providing certainty to the task of designing and printing the warnings and offer appropriate assurances that the warnings will serve their purpose. We have modified the provision that the warning be reproduced on cardboard stock to require that it be reproduced on "heavy paper or other durable material". We have also adopted one suggestion that a citation to title 17 of the United States Code be included in the warning.

The proposed regulation is adopted with changes, as set forth below:

Part 201 of 37 CFR Chapter II is amended by adding a new § 201.14 to read as follows:

**§ 201.14 Warnings of copyright for use by certain libraries and archives.**

(a) *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 Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order 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 Pub. L. 94-553. 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 phonorecords.

(b) *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 material.

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

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

ble 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.

(17 U.S.C. 207, and under the following sections of Title 17 of the U.S. Code as amended by Pub. L. 94-553: 108; 702.)

Dated: November 10, 1977.

WALDO H. MOORE,  
Assistant Register of Copyrights  
for Registration.

Approved:

DANIEL J. BOORSTIN,  
Librarian of Congress.

[FR Doc.77-33111 Filed 11-15-77;8:45 am]

Sections 110, 112, 117 and 118  
of the Copyright Act

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays 17 USC 110.

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if—

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for—

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions;

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

Notice of  
objection to  
performance.

- (iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;
- (b) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—
  - (A) a direct charge is made to see or hear the transmission;
  - or
  - (B) the transmission thus received is further transmitted to the public;
- (c) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;
- (d) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;
- (e) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293-73.295 and 73.593-73.595); or (iv) a cable system (as defined in section 111(f)).
- (f) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (e)(iii), *Provided*, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

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§ 112. Limitations on exclusive rights: Ephemeral recordings

(a) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

- (1) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(2) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(3) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if—

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the preexisting works employed in the program.

§ 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems . 17 USC 117.

Notwithstanding the provisions of sections 106 through 116 and 118, this title does not afford to the owner of copyright in a work any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting 17 USC 118.

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results. Notwithstanding any provision of the antitrust laws, any owners of copyright in works specified by this subsection and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

Notice,  
publication in  
Federal Register.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may, within one hundred and twenty days after publication of the notice specified in this subsection, submit to the Copyright Royalty Tribunal proposed licenses covering such activities with respect to such works. The Copyright Royalty Tribunal shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Copyright Royalty Tribunal shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal. In establishing such rates and terms the Copyright Royalty Tribunal may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in clause (2) of this subsection. The Copyright Royalty Tribunal shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

Rates and terms,  
publication in  
Federal Register.

(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1982, and at five-year intervals thereafter, in accordance with regulations that the Copyright Royalty Tribunal shall prescribe.

(d) Subject to the transitional provisions of subsection (b) (4), and to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b) (2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Tribunal under subsection (b) (3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in clause (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in clause (1), and the performance or display of the contents of such program under the conditions specified by clause (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in clause (1), and are destroyed before or at the end of such period. No person supplying, in accordance with clause (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this clause shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this clause: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

(1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the anti-trust laws. Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.

(2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in clause (2) of subsection (d).

Report to Congress.

AMERICAN COUNCIL ON EDUCATION  
ONE DUPONT CIRCLE  
WASHINGTON, D. C. 20036

RECEIVED

DEC 21 1977

December 15, 1977

EXECUTIVE VICE CHANCELLOR

Dear Colleague:

On October 3, we wrote to you concerning the issue of potential copyright infringement liability for the performance of music on campus effective January 1, 1978.

Since that time a number of individuals representing the affected sectors of higher education have been meeting with representatives of the three performing rights organizations (ASCAP, BMI and SESAC) in order to formulate licensing agreements for music use by higher education. Progress has been slow but steady. The complexity of the issues, the diversity of the institutions, and the financial postures of both sides have extended the process beyond our earlier expectations.

We expect to finalize the agreements shortly. Following that accord, it will take our counsel working in conjunction with presidents, institutional counsels, and business officers some time to put final touches on the document.

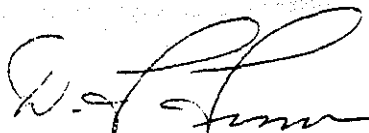
We are pleased to inform you that the three performing rights organizations have agreed not to take any copyright infringement action after January 1, 1978, against any college or university for violation of the music copyright provisions of the new law so long as good faith negotiations continue. The moratorium will not last beyond February 1, 1978, and may be terminated prior to that date upon two weeks notice by each of the performing rights organizations with respect to the moratorium agreed to by it. We have furthermore agreed that the agreements will apply retroactively to January 1, 1978.

We hope to achieve a solution to this matter that will recognize and compensate the legitimate rights of composers and publishers while enabling institutions to utilize music without substantial economic hardship or unreasonable administrative accounting burdens. We will be in contact with you as soon as agreements are reached. Until that time, if you have any questions about the subject, please call Sheldon Elliot Steinbach, ACE's counsel, at 202-833-4738.

Cordially,



J. W. Peltason  
President  
American Council on Education



D. F. Finn  
Executive Vice President  
National Association of College  
and University Business Officers