



**COPYRIGHT LAW
FOR
SCHOOL AND COLLEGE
ADMINISTRATORS**

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Orange County Superintendent of Schools

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Inquiries regarding permission for use of material contained in this publication
should be addressed to:

Ronald D. Wenkart
General Counsel
Orange County Department of Education
200 Kalmus Drive
Costa Mesa, California 92628
(714) 966-4220

Schools Legal Service Staff
Ronald D. Wenkart, General Counsel
Claire Y. Morey, Counsel
Lysa M. Saltzman, Counsel
Karen T. Meyers, Counsel
Norma Garcia, Paralegal

TABLE OF CONTENTS

	<u>Page</u>
I. HISTORY OF COPYRIGHT LAW	1
II. PURPOSE OF COPYRIGHT LAW	1
III. SECURING A COPYRIGHT	1
IV. THE FAIR USE EXCEPTION	3
A. Statutory Language.....	3
B. Applicability of Fair Use Exception.....	4
C. Libraries.....	5
D. Performance and Display of a Work.....	5
V. GUIDELINES FOR PHOTOCOPYING	6
VI. OFF-AIR RECORDING OF BROADCASTING PROGRAMMING	7
VII. GUIDELINES FOR COPYING COMPUTER SOFTWARE	8
VIII. WORKS MADE FOR HIRE	9
IX. PENALTIES FOR VIOLATIONS OF THE COPYRIGHT LAWS	10
X. GUIDELINES FOR CLASSROOM COPYING	11
XI. GUIDELINES FOR OFF AIR RECORDING	14
XII. GUIDELINES FOR EDUCATIONAL USES OF MUSIC	16
XIII. MODEL DISTRICT SOFTWARE POLICY	18
XIV. INDEPENDENT CONTRACTOR AGREEMENT	19

I. HISTORY OF COPYRIGHT LAW

Article I, Section 8 of the United States Constitution grants Congress the power: “To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries.”

Copyright law originated in England and over the years Congress has amended the copyright law a number of times. The copyright laws have been amended to keep pace with new technology such as sound recordings, motion pictures, radio, television, cable television, home video recording, and computers. In 1988, the copyright laws were amended to make U.S. law compatible with international law embodied in the Berne Convention.¹

II. PURPOSE OF THE COPYRIGHT LAW

The copyright law protects original works of authorship fixed in any tangible medium of expression including, literary works, musical works, dramatic works, and motion pictures.² The purpose of the copyright law is to provide the owner of copyrighted materials the exclusive right to reproduce a copyrighted work, to prepare derivative works based upon the copyrighted work, to distribute copies of the copyrighted work to the public by sale or transfer of ownership or by rental, lease or lending, to perform the copyrighted work publicly, or to display the copyrighted work publicly. Anyone who creates a work can claim a copyright. The copyright in a work exists upon the creation of the work in a tangible form of expression. The work does not have to be published or performed publicly.

III. SECURING A COPYRIGHT

Failure to place a notice of copyright on the material does not invalidate the copyright and is not required for works published after March 1, 1989. Although no longer required, a copyright notice is recommended to prevent a copyright infringer from using an “innocence” or “lack of knowledge” defense.

Notice is generally given by the symbol © or the word “copyright,” followed by the year of first publication and the name of the owner of the copyright.³ The Copyright Office also recommends that the copyright notice be placed in a location that gives reasonable notice to the public.

Registration with the Registrar of Copyrights is not required, but it is highly recommended. The Copyright Office recommends registration of the copyright for the following reasons:

1. Registration establishes a public record of the copyright;

¹ See, 17 U.S.C. Section 101 et seq.

² 17 U.S.C. Section 102(a).

³As an example, © Orange County Superintendent of Schools 2010 All Rights Reserved.

2. Registration is necessary before a lawsuit for copyright infringement may be filed in federal court;
3. If registered within five years of publication, registration will establish prima facie evidence of the validity of the copyright and the facts stated in the copyright certificate;
4. If registered within three months of publication or prior to any infringement, statutory damages and attorneys' fees will be available to the copyright owner in a court action.⁴

Registration requires that the appropriate forms and registration fee be filed with the Registrar of Copyrights in Washington, D.C. One copy of the work is required if unpublished and two copies are required if published. Copyright registration is effective on the date of receipt in the Copyright Office if all the required elements are in acceptable form.

Certain works may not be protected by copyright laws. Generally, these include works that have not been fixed in a tangible form of expression such as choreographic works which have not been recorded, improvisational speeches or performances that have not been written and recorded, titles, names, short phrases and slogans, mere listings of ingredients or contents, ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices as distinguished from a description, explanation or illustration. Also, works that consist entirely of information that is common property and contain no original authorship cannot be copyrighted. For example, standard calendars, height and weight charts, tape measures and rules, and lists of tables taken from public documents or other common sources cannot be copyrighted.

California community college districts, county boards of education, and school districts have statutory authority to secure copyrights. See, Education Code sections 1044, 1045, 35170, and 72207. Districts should follow the same procedure as other copyright holders.

For works originally copyrighted on or after January 1, 1978, the work is automatically protected from the moment of its creation and is protected for a term of the author's life plus an additional 70 years after the author's death. For works made for hire the duration of the copyright is 95 years from publication or 120 years from creation, whichever is shorter.

For works published between 1964 and 1977, the copyright extends for 95 years after the publication date. For works published between 1923 and 1963, the protection will last for 95 years from the date of publication if the author applied for a renewal of the copyright. Any work published prior to 1923 is in the public domain. Works in the public domain may be used freely

⁴ See, Circular 21, "Reproduction of Copyrighted Works by Educators and Librarians," United States Copyright Office (2009), available online at <http://www.copyright.gov>.

without seeking copyright permission. Information may be obtained on the Internet regarding works in the public domain, including a list of musical works that have entered the public domain.⁵

Any transfer of copyright is not valid unless the transfer is made in writing and signed by the owner of the copyright. Transfer of a right on a nonexclusive basis does not require a written agreement. A copyright may also be conveyed by operation of law or bequeathed by will.

Protection against copyright infringement is regulated by the Berne Convention. Most of the major industrialized countries have agreed to the provisions of the Berne Convention. President Reagan signed the Berne Convention Implementation Act of 1988 on October 31, 1988, which amended U.S. copyright law to conform to international law.

IV. THE FAIR USE EXCEPTION AND OTHER EXCEPTIONS

A. The Statutory Language

The doctrine of fair use is an exception to the concept of the exclusive use or the statutory grant of a monopoly under the copyright laws. The fair use exception has been codified in 17 U.S.C. Section 107, which states in part:

“Notwithstanding the provisions of sections 106 and 106A, 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 non-profit 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.”

⁵ See, P.D. Info at www.pdinfo.com.

B. Applicability of the Fair Use Exception

In determining whether the fair use exception applies, the purpose and the character of the use must be considered. For example, it must be considered whether the use is for a commercial nature or is for nonprofit educational use. The legislative history indicates that Congress did not intend to exempt educational institutions from the copyright laws but rather to use the not-for-profit education exception in weighing whether the fair use exception applies in any given circumstances. In essence, if the use is for a non-profit educational use rather than a commercial use, broader leeway will be allowed.

The nature of the copyrighted work will also be considered. Whether the materials are out of print, whether the materials are unavailable, whether it is being used for a commercial market or for an educational purpose, and whether the distribution will serve the public interest or whether it will stifle the incentive to produce or create new works, will be considered.

Another factor is the amount and substantiality of the work used in relation to the copyrighted work as a whole. The larger the portion of the particular work that is used, the less likely fair use will be considered as a defense. The courts will also look at such factors as the length and frequency of the use.

The courts will also look at the effect upon the potential market. The courts will not only look at the potential loss of book sales, for example, but also potential sales for such things as paperback rights, movie rights, television rights, etc.

Satire and parody have been justified as fair use even when of a commercial nature. However, if the satire or parody copies the entire work, an infringement may be found.

Other factors that the courts will look at are whether the use diminishes potential sales, whether it has a negative cumulative effect on sales and whether the use of copies affected the demand for the original.

Another exception to the copyright laws involves school and public libraries. With respect to school and public libraries, the copyright owner's exclusive right to distribute his work is limited to the first sale. Thereafter the public or school library, which owns the first copy, may freely distribute it. Libraries may also make copies of copyrighted works for themselves and the public. Section 108 allows libraries to reproduce and distribute one copy or phonorecord under the following conditions:

1. The copying or distribution is made without any direct or indirect commercial purpose;
2. The collections of the library must be open to the public or be available to researchers; and

3. The reproduction or distribution of the work carries the copyright notice.

C. Libraries

Section 108 also authorizes a library to make a single copy of an entire unpublished work for preservation and security or for deposit in another library, provided the library currently has the item in its collection. A library may reproduce an entire published work in its collection if it is damaged, deteriorating, lost or stolen, after it has been determined that an unused replacement cannot be obtained at a fair price. Section 108 also authorizes libraries to copy articles from journals or periodicals and to use these copies in interlibrary loan transactions under certain conditions.

D. Performance and Display of a Work

Section 110 exempts performance or display of a work in a classroom by instructors or pupils. If a work is performed or displayed as part of a classroom activity, there is no copyright infringement. A copyrighted article may be shown on an overhead projector in the classroom, for example, or a play may be read or performed in the classroom. The performance must be part of instruction, and not given for the recreation or entertainment of any part of the audience. The performance may not be broadcast by either radio or television, but it may be amplified or projected within the same building or general area within a school campus or cluster of buildings, but not to an entire school system.

Section 110 exempts performance of nondramatic literary or musical works where admission is charged if the proceeds, after deduction for costs, are used for educational, religious or charitable purposes and the performers, promoters or organizers are not paid. Salaries paid to teachers or other school employees do not defeat the exemption.

Section 110 also exempts the turning on of a T.V. or radio in a public place from copyright infringement, provided there is no further amplification. Section 110 also gives broad exemption for special performances of nondramatic works for the deaf or blind.

However, where dramatic performances are performed outside the exceptions set forth above, permission must be obtained from the copyright holder and royalties must be paid. Section 110 also contains various exceptions for public and instructional broadcasting.

Face-to-face teaching activities in a classroom fall under the category of educational fair use and are exempt from the copyright requirements concerning public performances. In classroom settings, teachers and students may engage in a number of performance activities of limited portions of work that are related to course contact, such as playing recordings of music performing songs and reading plays. Generally, ten percent of the copyrighted materials may be used for teaching activities and still be considered fair use. The face-to-face teaching exception does not include school assemblies, sporting events, or school plays. It only covers performances that are a regular part of the school's curriculum.⁶

⁶ 17 U.S.C. Section 110.

The Copyright Act also contains an exemption for performances at school concerts, as long as no admission fee is charged or if there is an admission fee, the proceeds from the fee are used only for educational or charitable purposes.⁷ The performance of a musical play would not fall within this exemption regardless of whether an admission fee is charged or not. In order to perform a music play, the school must seek permission from the copyright holder.⁸ To obtain a license for musical works, school districts should contact the American Association of Composers, Authors and Publishers (ASCAP). ASCAP provides both blanket licenses or a per program license.⁹ ASCAP licenses cover musical works, but do not cover dramatic works. If a school wishes to stage a public performance of a dramatic, nonmusical play, it must contain permission from the copyright holder and pay a royalty fee. Most publishers of plays have information about licensing for schools, including how to seek permission to cut lines from the play.

Another issue that frequently arises with concerts and plays is when parents of students wish to record the concert or play. The copyright holder has exclusive rights to reproduce copyrighted works, even when the school has obtained a public performing license. Most licenses contain strict language regarding whether or not the performance can be videotaped. Schools should check the language of these licenses regarding recording rights. Generally, a music teacher may make a single recording of a student musical performance for teaching or evaluation purposes. If a school wishes to record student performances and distribute the recording within the school or the community, generally, it must first obtain a separate license to do so. Even if the school does not intend to sell copies, but give them away for free, the school must obtain a license.¹⁰ In order to obtain permission to videotape production of a copyrighted dramatic work, the school must contact the author's agent. The agent is generally noted on the copyright page of the script.

If a parent, teacher or student posts a video of a student performance on the Internet and the music being played is not in the public domain, it constitutes an infringement of the copyright. Publishers frequently send letters to schools demanding that the posted video be removed from the Internet. In addition, there are student privacy issues if the images of other children are identifiable on the Internet in a publicly posted video and parental permission has not been obtained. As a result, some schools prohibit the videotaping of student performances.

V. GUIDELINES FOR PHOTOCOPYING

In a joint letter to Congress, guidelines for classroom copying of books, periodicals and music were developed. These guidelines are not binding, but serve as a guide to the courts, copyright holders and educational institutions. A copy of these guidelines is attached.

⁷ 17 U.S.C. Section 110(4).

⁸ See, National Association for Music Education, Copyright Guidelines for SchoolTube, <http://www.menc.org/resources/view/copyright-guidelines-for-schooltube>.

⁹ See, American Society of Composers, Authors and Publishers (ASCAP), Customer Licenses: About ASCAP Licensing, <http://www.ascap.com/licensing/about.html>.

¹⁰ See, National Association for Music Education, United States Copyright Law: A Guide for Music Educators, <http://www.menc.org/resources/view/united-states-copyright-law-a-guide-for-music-educators>.

These guidelines contain limits on single copying for teachers and making multiple copies for classroom use. An example of what can happen when these guidelines are violated is illustrated by the case of Marcus v. Rowley.¹¹ In Marcus v. Rowley, a lawsuit was brought by a former teacher of the San Diego Unified School District who wrote a book on cake decorating. The book was copyrighted and consisted of 35 pages, 29 pages of which were original work and 6 pages which were reproduced with the permission of the copyright holders. The former public school teacher sold the books for \$2.00 each and made \$1.00 profit from each book. Approximately 125 copies were sold to students in her adult education classes, but they were not sold by bookstores.

One of the defendants, a school teacher employed by the San Diego Unified School District who taught food service classes, prepared a cake decorating learning activity package for use in her classes. The activity package was 24 pages long and 15 copies were made for her students to use. Approximately 60 students used them. Neither the teacher nor the school district derived any profit from the learning activity package; however, 11 of the 24 pages of the booklet were copies from the former teacher's book and no credit was given to the former teacher.

The Court of Appeals held that a finding of nonprofit educational use does not automatically compel a finding of fair use and noted that the school district and the defendant teacher did not attempt to obtain the former teacher's permission or credit her work. The court found that the former teacher's work was both creative and informational and that nearly 50 percent of the defendant's learning activity package consisted of direct copies from the plaintiff's book.

The Court of Appeals also applied the guidelines and found that the guideline of 10 percent of the work was violated, that the guideline of spontaneity was violated and that each copy did not include a notice of copyright. The Court of Appeals found against the San Diego School District and sent the matter back to the lower court for a determination of damages based on copyright infringement.

There are also guidelines for educational uses of music, containing certain limits on copying purchased copies. Multiple copies of excerpts of works may be made if they do not exceed 10 percent of the whole work and the number of copies does not exceed one copy per pupil.

VI. OFF-AIR RECORDING OF BROADCAST PROGRAMMING

One of the most controversial legal issues of copyright law for educational institutions involves the off-air taping of television programs for classroom use. Producers of television programs were concerned about the loss of profits and their inability to sell secondary rights, such as film rights and video tapes, if the public was free to make copies of the television programs.

¹¹ 695 F.2d 1171 (9th Cir. 1983).

In Encyclopedia Britannica Educational Corporation v. Crooks,¹² the District Court held that a consortium of 19 local school districts in New York which systematically taped television broadcasts off the air from cable television programs and microwave transmissions and established a library of 500 video programs available to local school districts, was not fair use. The Court enjoined the school districts' continued off-air taping practices and granted court costs and \$250 in damages for each infringement.

A copy of the guidelines for off-air recording of broadcast programming for educational purposes is attached. The guidelines were developed for off-air recording by nonprofit educational institutions only. Under the guidelines, an educational institution may retain a recorded broadcast for a period not to exceed 45 calendar days and must erase or destroy the broadcast tape after that period. Off-air recordings may be used only by individual teachers in the course of relevant teaching activity and repeated once only when instruction reinforcement is necessary. Off-air recordings may only be made at the request of and used by individual teachers and may not be regularly recorded in anticipation of requests. The off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. All copies of off-air recordings must include the copyright notice of the broadcast program as recorded. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of the guidelines.

VII. GUIDELINES FOR COPYING COMPUTER SOFTWARE

It is technologically possible to duplicate most commercially available software for use in the classroom. Section 117 of the Copyright Act was added in 1980 and amended in 1998 and states in part:

"Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of the computer program provided:

- (1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
- (2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."

¹² 447 F.Supp. 243 (W.D.N.Y. 1978), 542 F.Supp. 1156 (W.D.N.Y. 1982), 558 F.Supp. 1247 (W.D.N.Y. 1983).

Under these guidelines, if a teacher, for example, loads a copyrighted software program into a personal computer terminal, thus creating a copy of that program in the computer's random access memory, there is no copyright infringement since this is an essential step in the utilization of the computer program in conjunction with a machine (e.g. hardware). A teacher may also make a backup copy or archival copy to ensure that a copy will not be destroyed or lost due to student abuse, computer failure or other events which may occur. However, the archival copy may not be used in another computer; it may only be used for backup purposes.

Legislation has been enacted to address the digital revolution, notably the Digital Millennium Copyright Act of 1998. However, the legislation failed to address educational uses of computer software. For example, the "fair use" provisions of 17 U.S.C. Section 107 are unchanged.

A Conference on Fair Use (CONFU) was convened in 1994, to study the application of fair use standards to computer usage. CONFU developed fair use guidelines for educational multimedia, distance learning, and digital images, and a statement on the use of copyrighted computer programs in libraries. In contrast to the earlier guidelines for classroom copying, educational uses of music, and off-air recordings, there was no consensus or Congressional approval of the CONFU guidelines. Therefore, although the guidelines are thoughtful and well-drafted, adoption of the guidelines by a school district is no guarantee that a court would find specific educational uses to be "fair use."

As discussed above, the guidelines for classroom copying quantify types of copying that are deemed to be "fair use." It is virtually impossible to quantify fair use of computer software, because it is impracticable to use only portions of a computer software program.

Software is licensed rather than sold. Typically, software licenses limit the number of terminals or the site where the software may be used. Districts are strongly encouraged to understand and comply with the license agreements for use of software in educational settings. In some instances, it may be possible to negotiate changes in a license agreement, to accommodate a district's educational needs.

Districts should adopt written rules and regulations regarding the use of copyrighted software. Teachers should be made aware of the constraints imposed by copyright law in this area. Software should be stored in a secure area, students should not be permitted to utilize computer labs without proper supervision, and districts should budget appropriate funds to purchase multiple copies of needed software or enter into multiple-use license agreements so that copies of computer software can be made.

VIII. WORKS MADE FOR HIRE

Under the "works made for hire" principle of copyright law, the copyright for works created by employees is owned by the employer. The employer is considered the author or creator of the work unless there is an agreement that the employee will own the copyright. In the educational context, this would include instructional texts, tests, answer sheets, and other types of instructional materials.

At one time, the federal courts were divided with regard to whether the works made for hire principle applies to works created by consultants or independent contractors. The United States Supreme Court finally clarified this issue in 1989, when it decided Community for Creative Non-Violence v. Reid.¹³ In Reid, the court addressed whether a statue commissioned by a nonprofit organization and created by an individual artist was the property of the organization or the artist. There was no written agreement between the parties, and nothing was said about copyright ownership. The court relied on common-law agency principles for determining whether the artist was an employee or an independent contractor. After analyzing the artist's status in light of 11 criteria, the court concluded that he was not an employee but an independent contractor. Because the artist was not an employee, and because there was no agreement concerning copyright ownership, the statue was not considered a work for hire. Thus, the copyright in the work belonged to the artist, not the Community for Creative Non-Violence.

Therefore, it is strongly recommended that whenever a district contracts with a consultant to prepare any type of material, a written agreement should be entered into which states the respective rights of the parties with regard to the copyright of the materials. Attached is a copy of model contract language for consultants or independent contractors who produce materials which may be copyrighted for districts.

IX. PENALTIES FOR VIOLATIONS OF THE COPYRIGHT LAWS

Under the copyright laws, copyright infringement can result in lawsuits seeking injunctive relief against further violation of the copyright laws, impoundment of materials which infringe the copyright, actual damages suffered by the plaintiff as well as statutory damages of not less than \$500 and not more than \$20,000 per infringement and \$100,000 per willful infringement, and attorneys' fee and costs.

Section 504(c)(2) limits damages that may be assessed against educational institutions where such persons or institutions infringed the copyrighted material in the honest belief that what they were doing constituted fair use. There are also criminal penalties for willful violators who infringe on a copyright for commercial advantage or private financial gain, pursuant to Section 506.

¹³ 490 U.S. 730 (1989).

X.
GUIDELINES FOR
CLASSROOM COPYING

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

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

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in “I” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph].

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals].

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers' reprints or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

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

XI.
GUIDELINES FOR OFF-AIR RECORDING
OF BROADCAST PROGRAMMING
FOR EDUCATIONAL PURPOSES

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiation Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days-not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions – within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

XII. GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible 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.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. (a) For academic purposes other than performance, multiple copies of excerpts of work 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.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be made out of print or (2) unavailable except in a larger work, 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 which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as tape, disc or cassette) or copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording).

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

XIII.
MODEL DISTRICT SOFTWARE POLICY

I. PURCHASING

Section 1. It shall be the policy of the _____ District to negotiate agreements with producers of software that will allow the _____ District to make copies of the purchased software for an individual school site. If the district is unable to negotiate such an agreement, the _____ District shall purchase one copy of each software program for each classroom.

Section 2. The _____ District shall seek to enter into agreements with software manufacturers who will enter into multiple computer licensing agreements or will provide the _____ District multiple copy discounts.

Section 3. Each school site shall designate an employee who will be responsible for monitoring the school's compliance with all applicable copyright laws and licensing agreements. Each employee so designated will be responsible for reviewing and becoming familiar with the applicable copyright laws. The designated employee shall be either the site principal or an employee who reports directly to the site principal.

Section 4. Unless the applicable licensing agreement allows multiple classroom or multiple school use of a single program, the district shall not make multiple copies of the computer program or software.

Section 5. Employees or students shall not be allowed to make copies of any computer program or software without the written permission of the principal or the principal's designee. Written permission shall not be given unless authorized by the licensing agreement or the copyright holder in writing.

Section 6. All _____ District computer programs or software shall be used in the _____ District computer facilities only, unless written permission is given by the principal or the designee. Such written permission shall only be granted upon reasonable assurances that the intended off campus use is authorized and no unauthorized copies will be made.

Section 7. All computer programs and software of the _____ District shall be carefully inventoried and accounted for by the principal or the principal's designee. All unauthorized copies shall be destroyed upon discovery.

Section 8. Each school site shall distribute rules and regulations to students, parents and employees summarizing this policy.

Section 9. Copies of all license agreements shall be maintained at the district office and in the principal's office.

XIV.
INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is hereby entered into between the _____
District, hereinafter referred to as "DISTRICT," and _____
Name of Independent Contractor

_____ Mailing Address City State Zip Telephone Number

hereinafter referred to as "CONTRACTOR."

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, DISTRICT is in need of such special services and advice; and

WHEREAS, CONTRACTOR is specially trained and experienced and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. Services to be provided by CONTRACTOR: _____

_____.

Services shall be provided by _____
(Name of specific individual, if required)

2. Term. CONTRACTOR shall commence providing services under this AGREEMENT on _____, _____, and will diligently perform as required and complete performance by _____, _____.

3. Compensation. DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed _____ Dollars (\$_____). DISTRICT shall pay CONTRACTOR

according to the following terms and conditions: _____

_____.

4. Expenses. DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except as follows: _____

_____.

5. Independent Contractor. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees.

6. Materials. CONTRACTOR shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT, except as follows: _____

_____.

CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

7. Originality of Services. CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and/or video productions prepared for, written for, submitted to the DISTRICT and/or used in

connection with this AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.

8. Copyright/Trademark/Patent: CONTRACTOR understands and agrees that all matters produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT's express written permission. DISTRICT shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the DISTRICT. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

9. Termination. DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this AGREEMENT by the CONTRACTOR; or (b) any act by CONTRACTOR exposing the DISTRICT to liability to others for personal injury or property damage; or (c) CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within _____ (___) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall upon the expiration of the _____ (___) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charges to and collected from the CONTRACTOR. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT. Written notice by DISTRICT shall be deemed given when received by the other party, or no later than three days after the day of mailing, whichever is sooner.

10. Hold Harmless. CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend the DISTRICT and its governing board, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the services called for in this AGREEMENT, however caused, except for liability for damages referred to above which result from the negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(b) Any injury to or death of any person(s), including the DISTRICT's officers, employees and agents, or damage to or loss of any property caused by any act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this AGREEMENT.

11. Insurance. Pursuant to Section 10, CONTRACTOR agrees to carry a comprehensive general and automobile liability insurance with limits of _____ Dollars (\$_____) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONTRACTOR and DISTRICT against liability or claims of liability which may arise out of this AGREEMENT. In addition, CONTRACTOR agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No

later than _____ (__) days from execution of this AGREEMENT by the DISTRICT and CONTRACTOR, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONTRACTOR agrees to name DISTRICT and its governing board, officers, agents and employees as additional insureds under said policy.

12. Assignment. The obligations of the CONTRACTOR pursuant to this AGREEMENT shall not be assigned by the CONTRACTOR.

13. Compliance With Applicable Laws. The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONTRACTOR, CONTRACTOR's business, equipment and personnel engaged in services covered by this AGREEMENT or accruing out of the performance of such services.

14. Permits/Licenses. CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this AGREEMENT.

15. Employment With Public Agency. CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

16. Entire Agreement/Amendment. This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT.

17. Nondiscrimination. CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, marital status or age of such persons.

18. Non Waiver. The failure of DISTRICT or CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. Notice. All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

DISTRICT:

CONTRACTOR:

20. Severability. If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

22. Governing Law. The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California. This AGREEMENT is made in and shall be performed in Orange County, California.

23. Exhibits. This AGREEMENT incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

- a. Exhibit A.
- b. Exhibit B.
- c. Exhibit C.

THIS AGREEMENT IS ENTERED INTO THIS ___ DAY OF ___, 20__.

Name of District

Contractor Name

By: _____

By: _____

Typed Name

Typed Name

Title

Title

Taxpayer Identification Number

- * *Risk Manager should review all insurance requirements for the District.*
- * *Criminal Record Check (Fingerprint), may be applicable.*