

**COLLEGE GUIDELINES
FOR COMPLYING
WITH COPYRIGHT LAW**

I. INTRODUCTION AND DISCUSSION

A. SOURCE OF GUIDELINES

York County Community College has adopted these Guidelines pursuant to Maine Community College System Policy 210(J). There, the Maine Community College System Board of Trustees declared that the policy of the System is to adhere to applicable provisions of copyright law. Although there is uncertainty in both the interpretation of existing law and the application of developing technology, the Board's policy represents the System's effort to promote legal compliance.

In many cases, copying facilitates the System's mission to develop and transmit information. Copying of copyrighted materials, however, is a right granted under the copyright law doctrine of "fair use" which cannot be abused. The Board has encouraged employees, faculty, staff and students to exercise good judgment in conscientiously attempting to comply with copyright law, and does not condone policies or practices that constitute an infringement of copyright law.

The Board has directed that the Colleges provide their faculty, staff and students with guidelines that clearly discourage violation of copyright law. It is the policy of the System that faculty, staff and students exercise sound judgment in determining what constitutes permissible copying under the law; secure applicable permission whenever it is legally necessary; and that each person be individually responsible for these determinations.

The Board's policy, like copyright law, applies to all forms of copying, whether undertaken at a college copying facility, a commercial copying center or self-service machine.

B. PURPOSE OF GUIDELINES

The requirements of copyright law are often complex and imprecise. Moreover, the rapid development of digital technology has further complicated this difficult area of law. The purpose of these Guidelines is to reflect the general consensus of conditions under which College employees and students may actively pursue their educational needs without violating copyright law. The goal of these Guidelines is to advise the College community that the more they exceed these Guidelines, the greater the risk they will violate copyright law. Because each case is fact-specific, individuals with questions regarding the application of these Guidelines to a particular situation should discuss their concerns with the College Librarian and/or Academic Dean.

C. BASIS OF COPYRIGHT LAW

Copyright is a property right designed to promote the progress of science and the useful arts by securing for an author the benefits of his or her original work for a limited time. Copyright law attempts further to balance the author's property interest in his/her work against the public interest in accessing information of universal concern, such as art, science, history and business. The end goal of this balance is to encourage the dissemination of intellectual works to the general public.

D. PENALTIES FOR VIOLATING COPYRIGHT LAW

A person who violates the law is liable to the copyright owner for the actual losses and lost profits. Where monetary losses are nominal, the copyright owner may claim statutory damages up to \$10,000, or punitive damages up to \$50,000 if the infringement is willful. In addition to suing for money, a copyright owner can also prevent future infringement through a court injunction.

The Copyright Act, however, specifically exempts from damages employees of non-profit educational institutions or libraries who believed or had reasonable grounds to believe that his/her use of the copyrighted work was a “fair use.” While this “fair use” provision (see F, infra) is often ambiguous, persons who attempt to stay within its parameters should have an adequate good faith defense in the case of an innocently committed infringement.

E. PRELIMINARY MATTERS

1. Assume the Material is Copyrighted

Copyright attaches as soon as a work is created; no additional registration or marking with the symbol © is required. Once attached, the copyright has an extended life: life of the author plus 75 years. After that time, a copyright may be renewed for additional years. There is often little public notice of renewal.

It should, therefore, be assumed all writings, particularly those dated 1906 or later, are covered by a valid copyright, unless information to the contrary is obtained from the owner or the U.S. Copyright Office.

2. Validating That Material is Copyrighted

Copyright Office Circular R22 in Appendix A explains how to investigate the copyright status of a work. One way is to use the Catalog of Copyright Entries published by the U.S. Copyright Office and available in the College Library. Alternatively, you may request the Copyright Office to conduct a search of its registration and/or assignment records. The Office charges an hourly fee for this service. You will need to submit as much information as you have concerning the work in which you are interested, such as the title, author, approximate date of publication, the type of work or any available copyright data. The Copyright Office does, however, caution that its searches are not conclusive.

3. Post Copyright Notices

Notice of copyright obligations should be posted at all photocopiers (Appendix B); internet access computer screens (Appendix C); interlibrary loan transmissions (electronic or paper) (Appendix D); library reserves; and other appropriate places.

F. GENERAL RULE THAT FAIR USE IS PERMITTED

The Copyright Act limits the rights of a copyright holder by allowing students, researchers and instructors to use, without express permission, copyrighted materials “fairly.” In determining whether the use made of a work in any particular case is a “fair use”, you must consider the purpose and character of the use; the nature of the copyrighted work; the amount of the copyrighted work used; and the effect of the use upon the potential market for or value of the copyrighted work. The following examples detail the application of these factors:

1. What is the purpose and character of the use?

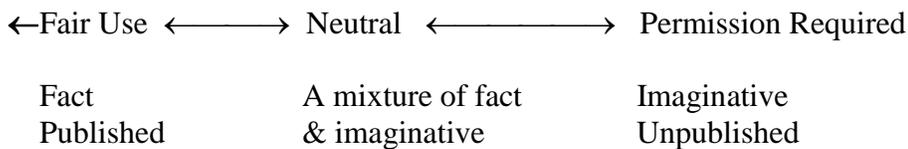
Different uses will have different purposes and/or characters, and the following scale gives examples of those differences:



Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner -- in favor of seeking permission. The uses in the middle, if they apply, add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

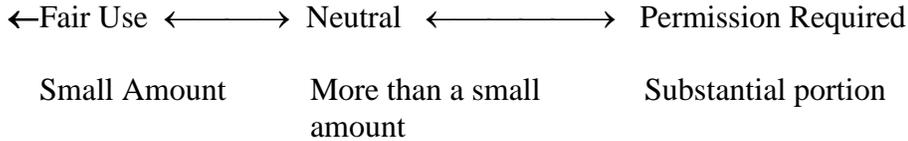
2. What is the nature of the work to be used?

The work to be copied can have different natures, and the following scale gives examples of those differences:



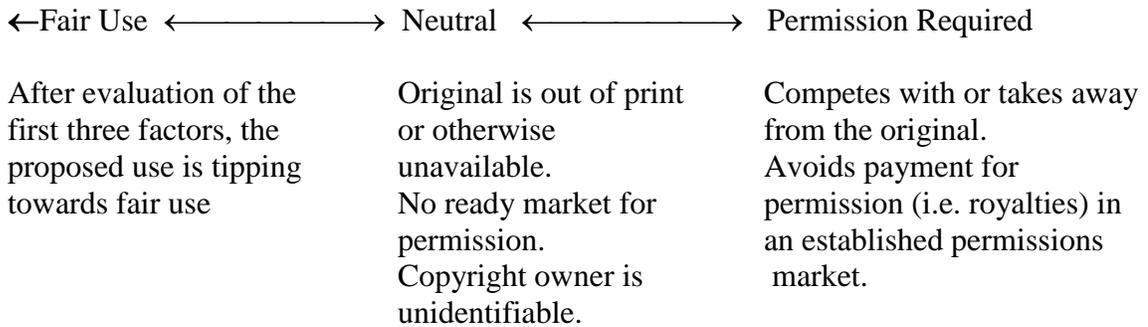
Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance.

3. How much of the work will you use?



Uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of requesting permission. If the first factor weighed in favor of fair use, you can use more of a work than if it weighed in favor of seeking permission. A non-profit use of a whole work will weigh somewhat against fair use. A commercial use of a whole work would weigh significantly against fair use. For example, a non-profit educational institution may copy an entire article from a journal for students in a class as a fair use; but a commercial copyshop would need permission for the same copying. Similarly, commercial publishers have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier portions.

4. If the proposed use were widespread, what effect would it have on the market for the original or for permissions?



This fourth factor asks, “Is the owner losing money because of this use?” This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing; it depends on what happened with the first three factors.

G. GETTING PERMISSION

If your intended use exceeds “fair use”, you need to get permission from the copyright holder. If you are in doubt as to whether a particular instance of photocopying is fair use, you should seek permission from either the publisher or the Copyright Clearance Center. Many publishers will cooperate and waive fees for such use.

1. Publisher

You may seek a publisher’s permission using the standard letter set forth in Appendix E.

2. Copyright Clearance Center

The Copyright Clearance Center (CCC) also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal that is registered with the CCC, report the copying beyond fair use to the CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from the CCC, 310 Madison Avenue, New York, NY 10017.

H. CHARGING FOR COPYING

Persons for whom copies are made, no matter the medium, should not be charged an amount over the actual cost of copying.

I. ATTRIBUTION AND ACKNOWLEDGEMENT

Educators and students should always credit the sources by citing the author, title, publisher, place and date of publication, the copyright notice ©, year of first publication and name of the copyright holder. This requirement applies to all works, including those prepared under fair use.

J. QUESTIONS?

If you are not sure how to handle a copyright matter or question, consult the sources listed in Appendix F, seek permission from the publisher or consult with the College Librarian or Academic Dean.

II. GUIDELINES FOR SPECIFIC MATERIALS

**PRINTED MATERIALS (EXCEPT MUSIC),
INCLUDING “COURSEPACKS”**

A. Copying PERMITTED Without Express Permission

1. Unrestricted Copying

- a. Writings published before January 1, 1978, which have never been copyrighted.
- b. Writings published with expired copyrights. All copyrights prior to 1906 have expired (but they may have been renewed).
- c. Most U.S. Government publications less than five years old may be photocopied without restrictions, except to the extent they contain copyrighted materials from other sources. In the absence of copyright notice on such works, it is reasonable to assume they are government works in the public domain.

2. Restricted Copying

- a. Single Copies by or at the request of an individual instructor of:
 1. a chapter of a book;
 2. an article from a magazine or newspaper;
 3. a short story, short essay or short poem, whether or not from a collective work;
 4. a chart, graph, diagram, drawing, cartoon or picture from a book, magazine or newspaper.
- b. Multiple Copies by or at the request of an instructor for classroom use in only one course:
 1. a complete poem if less than 250 words if printed on not more than two pages;
 2. an excerpt from a long poem, but not to exceed 250 words;
 3. a complete article, story or essay of less than 2,500 words;
 4. excerpt from a larger printed work not to exceed 10% of the whole, or 1,000 words, whichever is less;
 5. chart, graph, diagram, cartoon or picture book or magazine issue.
- c. Library Reserves

At the request of a faculty member, a library may place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those above, and to the following:

 1. If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, an entire chapter from a book, or an entire poem.
 2. Requests for multiple copies on reserve should meet the following guidelines:
 - (a) the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter and level;

- (b) the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material. A reasonable number of copies is, in most instances, less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students and the length of the time allowed for completion of the assignment may permit more in unusual circumstances;
- (c) the material should contain a notice of copyright;
- (d) the effect of photocopying the material should not be detrimental to market sales of the work.

B. Copying PROHIBITED Without Express Permission

1. More than one work or two excerpts from a single author during one class term.
2. More than three works from a collective work or periodical volume during one class term.
3. More than nine sets of multiple copies for distribution to students in one class term.
4. Use to create or replace or substitute for anthologies, compilations or collective works.
5. “Consumable works” such as workbooks, standardized tests and answer sheets. (Note: these prohibitions do not apply to current new magazines and newspapers.)
6. Copying that is not clearly a fair use and which is done repeatedly, either by semester or year, by the same instructor for the same purpose.

SLIDES, OVERHEADS AND VIDEO TAPES

A. Copying PERMITTED Without Express Permission

1. Creating a slide or overhead transparency from multiple sources as long as creation does not exceed 10% of photographs in one source (book, magazine, filmstrip, etc.) unless the source forbids photographic reproduction.
2. Creating a single overhead transparency from a single page of a “consumable” workbook.
3. Reproducing selected slides from a series if reproduction does not exceed 10% of total or excerpt “the essence.”
4. Excerpting sections of a film for a local video tape (not to be shown over cable) if excerpting does not exceed 10% of the total or “the essence” of the work.
5. Stories of literary excerpts may be narrated on tape and duplicated provided similar material is not available for sale.
6. Archival copies of video or audio tapes may be produced. However, only a single copy may be used at any time.
7. Copying of phonograph records to cassette, but only if the record is then held as the archive copy.
8. Copying of a video tape to another video tape format so the buildings with the non-compatible formats may have access to the same program. However, only one tape may be used at a time.

B. Copying PROHIBITED Without Express Permission

1. Duplication of a tape, except as permitted above, unless reproduction rights have been secured.
2. Reproducing commercial “ditto masters”, individually or in sets (including multimedia kits) if available for sale separately.
3. Except as permitted above, converting one media format to another (i.e. film to video tape) unless permission is secured.

COMPUTER SOFTWARE

A. Copying PERMITTED Without Express Permission

1. A backup copy or adaptations created as an essential step in the utilization of the computer program.
2. A single backup copy made for archival purposes if a backup copy is not provided by the publisher, to be held in case the working copy is destroyed or no longer functions.
3. New copies of software within the limitations specified by a site licensing agreement with a software publisher.
4. Copies of “shareware” software may be made for demonstration and evaluation. Copies of “shareware” software should be accompanied by a copyright notice and the publisher’s “shareware” license agreement.

B. Copying PROHIBITED Without Express Permission

1. Creation of any new copies of copyrighted programs for any purpose other than the four listed above.
2. Creation of new copies while using a disk-sharing system.
3. Use of any “code breaker” programs to defeat copy protection mechanisms used by software publishers.
4. Any modification of copyrighted software, including but not limited to, decompiling, disassembling or otherwise reverse engineering copyrighted code.
5. Distribution of older versions of software when upgrading to a new version. Unless specifically permitted by the publisher, the earlier version and the upgrade are considered by law to be elements of the same copy of the software.

MUSIC

A. Copying PERMITTED Without Express Permission

1. Emergency copies for an imminent performance are permitted, provided they are replacing purchased copies and replacement is planned.
2. Multiple copies, one per pupil, of excerpts not constituting an entire performance unit or more than 10% of the total work may be made for academic purposes other than performances.
3. Purchased sheet music may be edited or simplified, provided the character of the work is not distorted or lyrics are not added or altered.
4. A single copy of a recorded performance by students may be retained by the College or the individual instructor for evaluation or rehearsal purposes.
5. A single copy of recorded copyrighted music owned and retained by the College for constructing exercises of examinations.

B. Copying PROHIBITED Without Express Permission

1. Replacing or substituting anthologies, compilations or collections.
2. From works intended to be “consumable”.
3. For purposes of performance except as permitted as above.
4. Substituting for purchase of music.

TELEVISION PROGRAMS

A. Copying PERMITTED Without Express Permission

1. A broadcast program may be recorded off-air simultaneously with transmission and retained by a non-profit educational institution for 45 calendar days after date of recording. After the 45-day retention period, such recordings should be erased or destroyed.
2. Off-air recordings may be used once by individual instructors for relevant classroom activities and once for necessary reinforcement during the first 10 consecutive school days after recording.
3. After the first 10 school days, recordings may be used up to the end of the 45-day retention period for instructor evaluation (i.e. to determine if the program should be purchased for the curriculum).
4. Such recordings may be made only at the request of and used by individual instructors. No broadcast program should be recorded more than once by the same instructor.
5. Such recordings need not be used in their entirety, but should not be altered or edited and should include the copyright notice on the program as recorded.

B. Copying PROHIBITED Without Express Permission

1. Off-air recording in anticipation of teacher request.
2. Using the recording for instruction after the 10-day period.
3. Holding the recording for weeks or indefinitely because
 - a. units needing the program concepts are not taught within the 10-day period;
 - b. an interruption or technical problem delayed its use;
 - c. another teacher wished to use it or any other supposed “legitimate” educational reason.

ELECTRONIC LIBRARY RESERVES

Rapid development of digital technology has created uncertainty in the application of traditional copyright rules to electronic storage. These Guidelines recommend that, where possible, persons should first attempt to apply the traditional fair use standard and then attempt to follow these Guidelines.

A. Notice of Copyright Obligations

On a preliminary or introductory screen, a notice consistent with the notice described in Appendix B of these Guidelines should be posted, and the notice should include additional language cautioning against further electronic distribution of the digital work.

B. Notice of Specific Copyright

If a notice of copyright appears on the copy of a work that is included in an electronic reserve system, the system should display this statement in a place conspicuous to the users: “The work from which this copy is made includes this notice: [restate the elements of the statutory copyright notice: e.g., Copyright 1999, XXX Corp.]”

C. Attribution

Materials included in electronic reserve systems should include appropriate citations or attributions to their sources.

D. Limiting the People With Access

Access to electronic reserve systems should be limited to students registered in the course for which the items have been placed on reserve, and to instructors and staff responsible for the course and electronic system. Short-term access to materials included on electronic reserve systems in previous academic terms may be provided to students who have not completed the course.

E. Technological Limits on Access

Access to electronic reserve systems should, to the extent technologically practicable, be further limited by:

1. individual password controls or verifications of a student’s registration status; or
2. password system for each class; or
3. retrieval of works by course number or instructor name, but not by author or title of the work.

F. No Charges

Students should not be charged specifically or directly for access to electronic reserve systems.

G. Obtaining Permission

Permission from the copyright holder should be obtained if the item is to be reused in a subsequent academic term for the same course offered by the same instructor, or if the item is a standard assigned or optional reading for an individual course taught in multiple sections by many instructors.

H. Duration of Permission

Material may be retained in electronic form while permission is being sought or until the next academic term in which the material might be used, but should not exceed three calendar years, including the year in which the materials are last used.

MULTIMEDIA PRESENTATIONS AND INSTRUCTION OVER THE INTERNET

A. Definitions

1. Multimedia presentation

Use of both original and pre-existing copyrighted works in various media formats including, for example, notes, audio, video, music, text material, graphics, illustrations, photographs, clip art, powerpoint, toolbook and other like media presentations.

2. Portion

The amount of a copyrighted work that can reasonably be used in educational multimedia projects under these Guidelines regardless of the original medium from which the copyrighted works are taken.

3. Aggregate

The total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission.

B. General Limitations

Instructors may use their educational multimedia projects for teaching courses for up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects for their own personal uses.

C. Specific Limitations

These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term:

1. Motion Media

Up to 10% or three minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated.

2. Text Material

Up to 10% or 1,000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology should be used. For poems of greater length, 250 words may be used, but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology should be used.

3. Music, Lyrics and Music Video

Up to 10%, but not more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, should be reproduced or otherwise incorporated. Any alterations to a musical work should not change the basic melody or the fundamental character of the work.

4. Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. A photograph or illustration may be used in its entirety, but no more than five images by an artist or photographer should be reproduced or otherwise incorporated. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, should be reproduced or otherwise incorporated.

5. Numerical Data Sets

Up to 10% or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table should be reproduced or otherwise incorporated. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

D. Additional Specific Limitations for Instruction Over the Internet

For remote instruction to students enrolled in curriculum-based courses and located at remote sites, the College should attempt to comply with general and specific fair use guidelines as well as, to the extent practical, present its material:

1. over a secure electronic network in real-time, or for after class review or directed self-study;
2. with technological limitations on access to the network and educational multimedia project (such as password or PIN); and
3. with technology that prevents the making of copies of copyrighted material.

If the College's network or technology used to access the educational multimedia project cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction, or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students should be advised that they are not permitted to make their own copies of the educational multimedia project.

E. Copying Multimedia Presentations

Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. No more than two use copies, only one of which should be placed on reserve. An additional copy may be made for preservation purposes but should only be used or copied to replace a use copy that has been lost, stolen or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy.

III. APPENDIX

APPENDIX A

**COPYRIGHT OFFICE CIRCULAR R22
(ATTACHED)**

APPENDIX B

NOTICE WARNING CONCERNING COPYRIGHT RESTRICTIONS

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, UNITED STATES CODE) GOVERNS THE MAKING OF COPIES OR REPRODUCTIONS OF COPYRIGHTED MATERIALS.

UNDER CERTAIN CONDITIONS SPECIFIED IN THE LAW, LIBRARIES AND ARCHIVES ARE AUTHORIZED TO FURNISH A COPY OR OTHER REPRODUCTIONS. ONE OF THESE SPECIFIED CONDITIONS IS THAT THE COPY 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 COPY OR REPRODUCTION FOR PURPOSES IN EXCESS OF “FAIR USE”, THAT USER MAY BE LIABLE FOR COPYRIGHT INFRINGEMENT.

THE INSTITUTION RESERVES THE RIGHT TO REFUSE TO ACCEPT A COPYING ORDER IF, IN ITS JUDGMENT, FULFILLMENT OF THE ORDER WOULD VIOLATE COPYRIGHT LAW.

APPENDIX C

COMPUTER SCREEN NOTICE

CAUTION IN DOWNLOADING MATERIAL FROM THE INTERNET

Easy access to material on the Internet does not necessarily mean that the material can be reproduced without permission from a copyright holder. Moreover, some copyrighted works may have been posted on the Internet without authorization of the copyright holder. Faculty, staff and students should, therefore, use caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network.

APPENDIX D

INTERLIBRARY LOAN

YORK COUNTY COMMUNITY COLLEGE LIBRARY

NOTICE WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of copies or reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a copy or reproduction. One of these specific conditions is that the copy 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 copy or reproduction for purposes in excess of "fair use", that user may be liable for copyright infringement. This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would violate copyright law.

Name: _____ Date: _____

Address: _____

Phone: _____ Student ID#: _____

Author: _____

Book Title: _____

Article Title: _____

Journal Title: _____

Vol: _____ Issue: _____ Date: _____ Pages: _____

Source of reference:

Library Use Only:

Date Ordered: _____ Location: _____

OCLC/Docline #: _____

Phone: _____ Fax: _____ E-mail: _____

Signature

Date

APPENDIX E
SAMPLE LETTER TO COPYRIGHT OWNER (PUBLISHER)
REQUESTING PERMISSION TO COPY

Date

Name
Address
City, State and Zip Code

Dear Sir or Madam:

I would like permission to copy the following for continued use in my classes in future semesters:

Title:

Copyright:

Author:

Material to be duplicated:

Number of copies:

Distribution to:

Type of reprint: (i.e. photocopy)

Use: (used to supplement teaching materials)

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,

APPENDIX F

RECOMMENDED RESOURCES

Model Policy Concerning College and University Photocopying For Classroom, Research and Library Reserve Use, Prepared by The American Library Association, March 1982

Fair Use of Copyrighted Materials, University of Texas System Web Page, www.utsystem.edu/ogc/intellectualproperty/copypol2.htm.

A Copyright Sampler, CJCLS Guide #2, Community and Junior College Libraries Section, Association of College and Research Libraries, A Division of the American Library Association, Chicago 1996

A Guide to Copyright Issues in Higher Education, 4th ed., Hemnes, Thomas M.S., Pyle, Alexander H., McTeague, Laurie M. and Dyal-Chand, Rashmi; National Association of College and University Attorneys, Washington, D.C., July 1997

Copyright Considerations in Distance Education and Technology-Mediated Instruction, Salomon, Kenneth D.; American Association of Community Colleges, available at <http://199.75.76.16/headline/110399head2.htm>.