Copyright Issues and Fair Use Guidelines Handbook

Prepared by:

Copyrights and Patents Committee

The Copyrights and Patents Subcommittee would like to thank the University of Texas for their gracious permission in allowing us to use their documents.

Sharon Alter, Anita Crawley, Collette Marsh, Mary Singelmann (ca2000)
(Updated by Fair Use Committee: Jane Allendorph (co-chair), Collette Marsh, Kimberly Heinz, Valerie Harley, Sam Rosby, Sarah Stark, Joe Accardi (co-chair), appointed by Vice President of Academic Affairs, 2002)
Index to the
Copyrights and Patents Committee
HANDBOOK

PAGE CONTENTS

3 Notice to All Personnel
4 Statement by Creators (see also Sample Letter #4)
5 Copyright General Information - Web sites
6 Notice of Copyright - from the U.S. Copyright Office
7 Need Permission to Use It? (see also Sample Letter #4)
8 Types of Educational Materials Agreements
10 Four Factor Fair Use Test
14 Fair Use
15 Educational Fair Use Guidelines for Distance Learning
20 Short List Summary of Suggested Multimedia Fair Use Guidelines
21 Fair Use Rules of Thumb for:
22 Coursepacks
23 Distance Learning
24 Image Archives
25 Multimedia Works
26 Music
27 Research Copies
28 Reserves
29 Sample Letters
30 Instructions for Permission Letters
31 Letter #1 - Requesting Permission
33 Letter #2 - Requesting Permission
34 Letter #3 - Copyright License
36 Letter #4 - Requesting Non-Exclusive Copyright License
37 Letter #5 - Permission Form
38 Letter #6 - Cease and Desist Letter
39 Letter #7 - Assignment of Copyright
40 Sample Agreements
41 Sample Agreement #1 - Checklist for Software and Database Agreements
43 Sample Agreement #2 - Software License Agreement
45 Sample Agreement #3 - Copyright License Agreement
48 Sample Agreement #4 - Multimedia Development and Distribution Agreement
54 Sample Agreement #5 - College Personnel Ownership Agreement
59 Sample Agreement #6 - Joint Ownership Agreement
64 Sample Agreement #7 - Contribution to a Collective Work
67 Sample Agreement #8 - Works for Hire Agreement
70 Sample Agreement #9 - Contribution to Print Publication Agreement
71 Sample Agreement #10 - Print Publishing Agreement
76 Contribution to Electronic Journal Agreement
79 Index and URL citations

Draft of Copyrights and Patents Handbook
September 6, 2002
Notice to All Personnel

All written agreements require the approval of the Board of Trustees. The written agreements will serve as precedents of what constitutes "College Support."
Statement by Creators

The creators of intellectual property jointly or wholly owned by the College under the terms of this policy may be required to state that:

1.) to the best of their knowledge the intellectual property does not infringe on any existing patent, copyright or other legal rights of third parties; and
2.) that if the work is not the original expression or creation of the creators, the necessary permission for use has been obtained from the owner (see Sample Letters #1-6); and
3.) that the work contains no libelous material nor material that invades the privacy of others.
For general information related to copyright law and fair use, please refer to the following:

http://www.harpercollege.edu/library/copyright/

For basic copyright information and copyright registration forms from the U.S. Copyright Office:

http://lcweb.loc.gov/copyright/circs/circ1.html

U.S. Library of Congress Copyright site:

http://www.loc.gov/copyright/

University of Texas System:

http://www.utsystem.edu/OGC/IntellectualProperty/
NOTICE OF COPYRIGHT

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies then no weight shall be given to a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in Section 504(c)(2) of the copyright law. The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all the following three (3) elements:

1. **The symbol ©** (the letter C in a circle), or the word "Copyright", or the abbreviation "Copr."; and
2. **The year of first publication** of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any is reproduce in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and
3. **The name of the owner of copyright** in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1999 Jane Doe

The "C in a circle" notice is used only on "visually perceptible copies". Certain kinds of works - for example, musical, dramatic, and literary works - may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies", the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, of literary work that is recorded.

Form of Notice for Phonorecords of Sound Recordings

The notice for phonorecords embodying a sound recording should contain all the following three (3) elements:

1. **The symbol (P)** (the letter P in a circle); and
2. **The year of first publication** of the sound recording; and
3. **The name of the owner of copyright** in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of a sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: (P) 2000 A.B.C. Records, Inc.
Need Permission to Use It?

Answer these three questions to decide whether you need permission to use a copyrighted work.

1. **Is the work protected?**

   This Policy does not apply to, and anyone may freely use*:
   
   - Works that lack originality
     - logical, comprehensive compilations (like the phone book)
     - unoriginal reprints of public domain works
   - Works in the public domain
   - Freeware (not shareware, but really, expressly, available free of restrictions-ware)
   - US Government works
   - Facts
   - Ideas, processes, methods, and systems described in copyrighted works

   The presence or absence of a copyright notice no longer carries the significance it once did because the law no longer requires a notice. Older works published without a notice may be in the public domain, but for works created after March 1, 1989, absence of a notice means virtually nothing.

2. **If the work is protected, do you wish to exercise one of the owner's exclusive rights?**

   - Make a copy (reproduce)
   - Use a work as the basis for a new work (create a derivative work)
   - Electronically distribute or publish copies (distribute a work)
   - Publicly perform music, prose, poetry, a drama, or play a video or audio tape or a CD-ROM, etc. (publicly perform a work)
   - Publicly display an image on a computer screen or otherwise (publicly display a work)

3. **Is your use exempt or excused from liability for infringement?**

   If an exemption does not excuse infringement and eliminate the need to ask permission or pay fees to exercise the owner's rights, you need permission.

   * Even if all or part of a work is not protected by copyright law, it may be protected by other laws. For example, you may need to consider rights of privacy and publicity, ask permission to use a trade or service mark, or get a license to practice a patented process or system, but discussion of these rights and interests is beyond the scope of this Policy statement.
Types of Educational Materials Agreements

These Agreements address the following issues involved in creating and using educational materials on William Rainey Harper College campuses:

<table>
<thead>
<tr>
<th>Creation</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>Exploitation</td>
</tr>
<tr>
<td>Distribution</td>
<td>Publication</td>
</tr>
</tbody>
</table>

Read *Need Permission to Use it?* and *Four Factor Fair Use Test* first, to learn enough about ownership under Copyright Law to judge which of these contracts is best for your situation. Start with the one that best describes your circumstance.

These are agreements between (or among) creators of works:

- **College Personnel Ownership Agreement**
  This agreement:
  a. covers distance education materials created solely by personnel, either with or without significant kinds or amounts of College resources
  b. contemplates sole ownership of copyright pursuant to our Intellectual Property Policy (in other words, there will be no College contribution of copyrightable expression)
  c. includes the right to review and revise the work

- **Joint Ownership Agreement**
  This agreement:
  a. covers educational materials, especially multimedia materials and others that will likely involve College contribution of copyrightable expression and significant kinds or amounts of other resources
  b. contemplates that the College will jointly own the resulting work with one or more personnel members
  c. permits parties to elect which one will be responsible for marketing the work
  d. includes right to review and revise the work

- **Contribution to a Collective Work**
  This agreement:
  a. covers circumstances where an author will contribute material to a collection of similar materials, for example, contributing a course to an online degree program or a module to an online course.
  
  The contributor will retain copyright ownership of the contribution, but the College will own copyright in the collection and will retain a perpetual license to use the contribution.
  b. includes right to review and revise the contribution.
**Work For Hire Agreement**

This agreement:

a. covers any contribution to a College or personnel owned copyrightable work made by someone outside the College (contract labor) or a contribution from someone within the College specifically commissioned or hired to make the contribution.
Four Factor Fair Use Test

The *Rules of Thumb* (See pages 21-28) do not describe the outer limits of fair use; they describe a "safe harbor" within the bounds of fair use. So, a use that exceeds the suggestions of the *Rules of Thumb* may still be fair.

Most people think that the fair use test is difficult. Actually, it's not so much difficult as it is uncertain - susceptible to multiple interpretations. Two people can review the same facts about a proposed use and come to different conclusions about its fairness. That's because one must make many judgments in the course of weighing and balancing the facts.

Attorneys read the "judgments of judges" to learn how to make judgments ourselves, but judges see things differently (one from another) too. Because "reasonable minds can disagree" about fair use, perhaps it is unrealistic to try to predict what a judge would think about a proposed use. But that's just what this test is about.

Here's how it works:

With a particular use in mind,

- Read each question and the comments about it
- Answer each question about your use
- See how the balance tips with each answer
- Make a judgment about the final balance: overall does the balance tip in favor of fair use or in favor of getting permission?

The four fair use factors:

1. What is the character of the use?
2. What is the nature of the work to be used?
3. How much of the work will you use?
4. What effect would this use have on the market for the original or for permissions if the use were widespread?

**FACTOR 1: What is the character of the use?**

<table>
<thead>
<tr>
<th>Nonprofit</th>
<th>Criticism</th>
<th>Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational</td>
<td>Commentary</td>
<td></td>
</tr>
<tr>
<td>Personal</td>
<td>Newsreporting</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Otherwise &quot;transformative&quot; use</td>
<td></td>
</tr>
</tbody>
</table>

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, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.
Imagine that you could assign a numerical weight to each use (for example, from 1 to 10). A nonprofit educational use other than the middle uses, for example, making a copy of a journal article for a college class, might weigh 5 in favor of fair use. But a nonprofit educational use that is also criticism, for example, the inclusion by personnel of a quote from another's work in a scholarly critique, would weigh even more in favor of fair use: about 6 or 7. That's because the uses in the middle are "core" fair uses; the ones most dearly protected.

Even if they are for-profit, they weigh in favor of fair use: that's why they subtract from the weight against fair use of a commercial use. A commercial duplication of an article from a journal might weigh 5 against fair use. But a commercial commentary, while still weighing against fair use because it's commercial, would only weigh about 2 or 1.

This is not to suggest that fair use can be precisely quantitatively analyzed. Numbers are just a tool to illustrate how the facts interact and affect each other. Actually, numbers wouldn't make the analysis any easier: copyright owners and users would have just as much trouble agreeing on weights as we have agreeing on any other judgment about fair use.

**FACTOR 2: What is the nature of the work to be used?**

<table>
<thead>
<tr>
<th>Fact</th>
<th>A mixture of fact and imaginative</th>
<th>Imaginative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published</td>
<td></td>
<td>Unpublished</td>
</tr>
</tbody>
</table>

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.

Where is your balance tipping after you have assessed the first two factors?

**FACTOR 3: How much of the work will you use?**

<table>
<thead>
<tr>
<th>Small amount</th>
<th>More than a small amount</th>
</tr>
</thead>
</table>

This factor has its own peculiarities. The general rule holds true (uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of asking for permission), but 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 nonprofit 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 nonprofit 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.

Where is your balance tipping after you have assessed the first three factors? The answer to this question will be important in the analysis of the fourth factor!
FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market

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.

Here's why:

This factor poses a "circular reasoning" problem: we do the fair use analysis to find out whether we might owe the copyright owner some money for a particular use. But this fourth factor asks, "Is the owner losing money because of this use?" We don't know that yet, do we, because until we are through, we don't know whether he is entitled to any money that he could then lose. If we knew that he was entitled to some money and that he was therefore losing it because of our use, we would not be doing the fair use test; we would just pay the money.

In the jargon of logic, if we have to "assume our conclusion" in order to reach it (as in "Assume for the moment that the use is not fair; how much money is the copyright owner losing?"), our results are invalid (illogical). In practical terms, if a use would be a fair use except for the fact that it deprives the copyright owner of some royalties, that deprivation alone is not sufficient to convert the otherwise fair use to an infringing one. On the other hand, if one could conclude that a use was unfair after reviewing the first 3 factors, then it does not break the logic rules to take lost royalties into account. This means that if a use is tipping the balance in favor of fair use after the first three factors, the fourth factor should not affect the results, even if there is a market for permissions, even if the owner would lose money because of the use.

On the other hand, if a use is tipping the balance in favor of asking for permission one need not "assume" it's not fair, the first 3 factors show that it's not. Add to that an active permissions market and the fourth factor will decisively tip the balance. Forget fair use. Get permission.

The facts in the middle illustrate circumstances that probably cause the fourth factor to have little or no effect.

Does the balance for your use tip in favor of fair use or in favor of getting permission after consideration of all four factors?

Draft of Copyrights and Patents Handbook
September 6, 2002
* A Note About Time Limits - Although the statutory fair use analysis does not address time limits, many of our Rules of Thumb and all the Guidelines contain time limits on fair use. Many people do not understand this and wonder why a use that is fair today would cease to be fair at the end of a semester. This is hard to explain because it does not seem to have a basis in statutory requirements or case law. But there the limits are: in the Classroom Guidelines (1976); the CONFU Proposed Distance Learning Guidelines, multimedia Guidelines and Image Guidelines (all 1996); and even in the Electronic Reserve Guidelines (1996, non-CONFU). This has been discussed with other attorneys within the University of Texas community and we have not heard a satisfactory legal explanation. Nevertheless, it has been concluded that there may be two reasons we seem to agree to time limits anyway:

1) publishers clearly believe fair use has time limits;

2) courts seem increasingly willing to let the fourth factor of the fair use analysis trump all the other factors so that where there is a market for permissions, "fair use is negated." This was the position articulated by the majority in the recent MDS decision.

Under this strictly economic analysis, in those circumstances where a ready market for permissions exists, such as permission for coursepacks, fair use shrinks - perhaps in time as well as in other dimensions.
Fair Use
Educational Fair Use Guidelines For Distance Learning

These guidelines were developed during the CONFU process. For a full explanation of their status, see CONFU: The Conference on Fair Use.

Performance & Display of Audiovisual and Other Copyrighted Works

November 18, 1996

1.1 PREAMBLE

Fair use is a legal principle that provides certain limitations on the exclusive rights of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educational institutions, educators, scholars and students who wish to use copyrighted works for distance education under fair use rather than by seeking authorization from the copyright owners for non-commercial purposes. The guidelines apply to fair use only in the context of copyright.

There is no simple test to determine what is fair use. Section 107 of the Copyright Act sets forth the four fair use factors which should be considered in each instance, based on the particular facts of a given case, to determine whether a use is a fair use: (1) the purpose and character of the use, including whether 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.

While only the courts can authoritatively determine whether a particular use is a fair use, these guidelines represent the participants' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use. The participants also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply. The limitations and conditions set forth in these guidelines do not apply to works in the public domain -- such as U.S. government works or works on which the copyright has expired for which there are no copyright restrictions -- or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to revise these guidelines. Nothing in these guidelines should be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of distance education. The guidelines do not cover non-educational or commercial digitization or use at any time, even by nonprofit educational institutions. The guidelines are not intended to cover fair use of copyrighted works in other educational contexts such as educational multimedia projects, electronic reserves or digital images which may be addressed in other fair use guidelines.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.
1.2 BACKGROUND

Section 106 of the Copyright Act defines the right to perform or display a work as an exclusive right of the copyright holder. The Act also provides, however, some exceptions under which it is not necessary to ask the copyright holder's permission to perform or display a work. One is the fair use exception contained in Section 107, which is summarized in the preamble. Another set of exceptions, contained in Sections 110(1)-(2), permit instructors and students to perform or display copyrighted materials without permission from the copyright holder under certain carefully defined conditions.

Section 110(1) permits teachers and students in a nonprofit educational institution to perform or display any copyrighted work in the course of face-to-face teaching activities. In face-to-face instruction, such teachers and students may act out a play, read aloud a poem, display a cartoon or a slide, or play a videotape so long as the copy of the videotape was lawfully obtained. In essence, Section 110(1) permits performance and display of any kind of copyrighted work, and even a complete work, as a part of face-to-face instruction.

Section 110(2) permits performance of a nondramatic literary or musical work or display of any work as a part of a transmission in some distance learning contexts, under the specific conditions set out in that Section. Section 110(2) does not permit performance of dramatic or audiovisual works as a part of a transmission. The statute further requires that the transmission be directly related and of material assistance to the teaching content of the transmission and that the transmission be received in a classroom or other place normally devoted to instruction or by persons whose disabilities or special circumstances prevent attendance at a classroom or other place normally devoted to instruction.

The purpose of these guidelines is to provide guidance for the performance and display of copyrighted works in some of the distance learning environments that have developed since the enactment of Section 110 and that may not meet the specific conditions of Section 110(2). They permit instructors who meet the conditions of these guidelines to perform and display copyrighted works as if they were engaged in face-to-face instruction. They may, for example, perform an audiovisual work, even a complete one, in a one-time transmission to students so long as they meet the other conditions of these guidelines. They may not, however, allow such transmissions to result in copies for students unless they have permission to do so, any more than face-to-face instructors may make copies of audiovisual works for their students without permission.

The developers of these guidelines agree that these guidelines reflect the principles of fair use in combination with the specific provisions of Sections 110(1)-(2). In most respects, they expand the provisions of Section 110(2).

In some cases students and teachers in distance learning situations may want to perform and display only small portions of copyrighted works that may be permissible under the fair use doctrine even in the absence of these guidelines. Given the specific limitations set out in Section 110(2), however, the participants believe that there may be a higher burden of demonstrating that fair use under Section 107 permits performance or display of more than a small portion of a copyrighted work under circumstances not specifically authorized by Section 110(2).

1.3 DISTANCE LEARNING IN GENERAL

Broadly viewed, distance learning is an educational process that occurs when instruction is delivered to students physically remote from the location or campus of program origin, the main campus, or the primary resources that support instruction. In this process, the requirements for a course or program may be completed through remote communications with instructional and support staff including either one-way or two-way written, electronic or other media forms.

Distance education involves teaching through the use of telecommunications technologies to transmit and receive various materials through voice, video and data. These avenues of teaching often constitute
instruction on a closed system limited to students who are pursuing educational opportunities as part of a systematic teaching activity or curriculum and are officially enrolled in the course. Examples of such analog and digital technologies include telecourses, audio and video teleconferences, closed broadcast and cable television systems, microwave and ITFS, compressed and full-motion video, fiber optic networks, audiographic systems, interactive videodisk, satellite-based and computer networks.

2. APPLICABILITY AND ELIGIBILITY

2.1 APPLICABILITY OF THE GUIDELINES

These guidelines apply to the performance of lawfully acquired copyrighted works not included under section 110(2) (such as a dramatic work or an audiovisual work) as well as to uses not covered for works that are included in Section 110(2). The covered uses are (1) live interactive distance learning classes (i.e., a teacher in a live class with all or some of the students at remote locations) and (2) faculty instruction recorded without students present for later transmission. They apply to delivery via satellite, closed circuit television or a secure computer network. They do not permit circumventing anti-copying mechanisms embedded in copyrighted works.

These guidelines do not cover asynchronous delivery of distance learning over a computer network, even one that is secure and capable of limiting access to students enrolled in the course through PIN or other identification system. Although the participants believe fair use of copyrighted works applies in some aspects of such instruction, they did not develop fair use guidelines to cover these situations because the area is so unsettled. The technology is rapidly developing, educational institutions are just beginning to experiment with these courses, and publishers and other creators of copyrighted works are in the early stages of developing materials and experimenting with marketing strategies for computer network delivery of distance learning materials. Thus, consideration of whether fair use guidelines are needed for asynchronous computer network delivery of distance learning courses perhaps should be revisited in three to five years.

In some cases, the guidelines do not apply to specific materials because no permission is required, either because the material to be performed or displayed is in the public domain, or because the instructor or the institution controls all relevant copyrights. In other cases, the guidelines do not apply because the copyrighted material is already subject to a specific agreement. For example, if the material was obtained pursuant to a license, the terms of the license apply. If the institution has received permission to use copyrighted material specifically for distance learning, the terms of that permission apply.

2.2 ELIGIBILITY

2.2.1 ELIGIBLE EDUCATIONAL INSTITUTION: These guidelines apply to nonprofit educational institutions at all levels of instruction whose primary focus is supporting research and instructional activities of educators and students but only to their nonprofit activities. They also apply to government agencies that offer instruction to their employees.

2.2.2 ELIGIBLE STUDENTS: Only students officially enrolled for the course at an eligible institution may view the transmission that contains works covered by these guidelines. This may include students enrolled in the course who are currently matriculated at another eligible institution. These guidelines are also applicable to government agency employees who take the course or program offered by the agency as a part of their official duties.
3. WORKS PERFORMED FOR INSTRUCTION

3.1 RELATION TO INSTRUCTION: Works performed must be integrated into the course, must be part of systematic instruction and must be directly related and of material assistance to the teaching content of the transmission. The performance may not be for entertainment purposes.

4. TRANSMISSION AND RECEPTION

4.1 TRANSMISSION (DELIVERY): Transmission must be over a secure system with technological limitations on access to the class or program such as a PIN number, password, smartcard or other means of identification of the eligible student.

4.2 RECEPTION: Reception must be in a classroom or other similar place normally devoted to instruction or any other site where the reception can be controlled by the eligible institution. In all such locations, the institution must utilize technological means to prevent copying of the portion of the class session that contains performance of the copyrighted work.

5. LIMITATIONS:

5.1 ONE TIME USE: Performance of an entire copyrighted work or a large portion thereof may be transmitted only once for a distance learning course. For subsequent performances, displays or access, permission must be obtained.

5.2 REPRODUCTION AND ACCESS TO COPIES

5.2.1 RECEIVING INSTITUTION: The institution receiving the transmission may record or copy classes that include the performance of an entire copyrighted work, or a large portion thereof, and retain the recording or copy for up to 15 consecutive class days (i.e., days in which the institution is open for regular instruction) for viewing by students enrolled in the course. Access to the recording or copy for such viewing must be in a controlled environment such as a classroom, library or media center, and the institution must prevent copying by students of the portion of the class session that contains the performance of the copyrighted work. If the institution wants to retain the recording or copy of the transmission for a longer period of time, it must obtain permission from the rightsholder or delete the portion which contains the performance of the copyrighted work.

5.2.2 TRANSMITTING INSTITUTION: The transmitting institution may, under the same terms, reproduce and provide access to copies of the transmission containing the performance of a copyrighted work; in addition, it can exercise reproduction rights provided in Section 112(b).

6. MULTIMEDIA

6.1 COMMERCIALLY PRODUCED MULTIMEDIA: If the copyrighted multimedia work was obtained pursuant to a license agreement, the terms of the license apply. If, however, there is no license, the performance of the copyrighted elements of the multimedia works may be transmitted in accordance with the provisions of these guidelines.

7. EXAMPLES OF WHEN PERMISSION IS REQUIRED:

7.1 Commercial uses: Any commercial use including the situation where a nonprofit educational institution is conducting courses for a for-profit corporation for a fee such as supervisory training courses or safety training for the corporation's employees.

7.2 Dissemination of recorded courses: An institution offering instruction via distance learning under these guidelines wants to further disseminate the recordings of the course or portions that contain performance of a copyrighted work.

Draft of Copyrights and Patents Handbook
September 6, 2002
7.3 Uncontrolled access to classes: An institution (agency) wants to offer a course or program that contains the performance of copyrighted works to non-employees.

7.4 Use beyond the 15-day limitation: An institution wishes to retain the recorded or copied class session that contains the performance of a copyrighted work not covered in Section 110(2). (It also could delete the portion of the recorded class session that contains the performance.)

Organizations Participating in Developing but not Necessarily Endorsing or Supporting These Guidelines:
American Association of Community Colleges
American Association of Law Libraries
American Council of Learned Societies
Association of American Publishers
Association of American Universities
Association of College and Research Libraries
Association of Research Libraries
Broadcast Music, Inc.
City University of New York
Coalition of College and University Media Centers
Creative Incentive Coalition
Houghton Mifflin
Indiana Partnership
John Wiley & Sons, Inc.
Kent State University
National Association of State Universities and Land Grant Colleges
National Geographic
National School Board Association
Special Libraries Association
State University of New York
U.S. Copyright Office
University of Texas System
Viacom
Short-List Summary of Multimedia Fair Use Guidelines

Below is a summary of what you may or may not do if you follow the Multimedia Fair Use Guidelines. Please understand that YOU ARE NOT EXEMPTED from the basic provisions of the Copyright Law even though you follow them.

Students may incorporate others' works into their multimedia creations and perform and display them for academic assignments.

Faculty may incorporate others' works into their multimedia creations
• to create multimedia curriculum materials.

• to teach remote classes where access and total number of students is limited; technology makes copying impossible (if materials can be copied, they may only be made available remotely [by network] for 15 days and then must be placed on reserve for on-site [at the remote location] use only

• Faculty may demonstrate their multimedia creations at professional symposia and retain same in their own portfolios.

• Time limit on fair use: 2 years from completion of the multimedia work.

• Copies limit: generally, only 2, but joint work creators may each have a copy.

• Portion limits:
  √ Motion media - up to 10% or 3 minutes, whichever is less.
  √ Text - up to 10% or 1000 words, whichever is less.
    □ Poems - up to 250 words, but further limited to:
      □ three poems or portions of poems by one poet; or
      □ five poems or portions of poems by different poets from an anthology.
    □ Music - up to 10% or 30 seconds, whichever is less.
    □ Photos and images - up to 5 works from one author; up to 10% or 15 works, whichever is less, from a collection.
    □ Database information - up to 10% or 2500 fields or cell entries, whichever is less.
Fair Use "Rules of Thumb"

Fair use "rule of thumb" for the following:
- Coursepacks
- Distance learning (performing others' works for distance learners)
- Image archives (like the Art History slide collection)
- Multimedia works (incorporating others' works in a multimedia work)
- Music
- Research copies
- Reserves

Try to stay within the Rules of Thumb. Interpret them conservatively. If you need to make a more extensive use of another's work than suggested by the appropriate Rule of Thumb, or if there isn't an appropriate Rule of Thumb, use the Four Factor Fair Use Test to determine whether the use is fair or requires permission.

**Performances and Displays in Face-to-Face Teaching and Broadcasts**

Educational institutions and governmental agencies are authorized to publicly display and perform others' works in the course of face-to-face teaching activities, and to a limited degree, in broadcasts. These rights are described in Sections 110 (1) and (2), respectively, of the copyright law.
RULES OF THUMB FOR COURSEPACKS

The Classroom Guidelines that were negotiated in 1976 can provide helpful guidance and we recommend that you read them.

1. Limit coursepack materials to
   • single chapters
   • single articles from a journal issue
   • several charts, graphs or illustrations
   • other similarly small parts of a work.

2. Include
   • any copyright notice on the original
   • appropriate citations and attributions to the source.

3. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.
RULES OF THUMB FOR DISPLAYING AND PERFORMING OTHERS' WORKS IN DISTANCE LEARNING

These Rules of Thumb are different from the others. For the most part, Rules of Thumb address making and distributing copies. Distance Learning raises these concerns too, but "public performance" is the focus of these Rules of Thumb. Section 110 of the copyright law authorizes educational performances and displays of entire works (like poems, plays, musical works and movies), but it significantly distinguishes between what can be performed in the classroom and what can be transmitted. This results in a "gap" in legal authority to perform certain works for distance learners. The CONFU Educational Fair Use Guidelines for Distance Learning apply fair use to fill this gap.

But the Distance Learning Guidelines only tackle fair use to perform and display others' works in two contexts:

- Live interactive distance learning classes
- Delayed transmission of faculty instruction.

They do not cover fair use of (performance of) others' works in online course materials. CONFU participants felt that these uses were so new that it was hard to even describe them, let alone describe fair use in this context. Nevertheless, the Guidelines can provide helpful guidance and we recommend that you read them.

Check Sections 110(1) and (2) before proceeding since they authorize considerable performance activity without any need to refer to these Rules of Thumb or the Guidelines. Also check any licenses acquired with materials purchased specifically for distance learning; they should include all the rights you will need to utilize them for that purpose, with no need to refer to these Rules of Thumb or the Guidelines. If they don't, and you need to rely on these Rules of Thumb in any distance learning context, remember: small parts, limited times and limited access are the keys to fair use.

1. Incorporate performances of others' works
   - sparingly
   - only if personnel or the institution possesses a legal copy of the work.

2. Include
   - any copyright notice on the original
   - appropriate citations and attributions to the source
   - a Section 108(f)(1) notice.

3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

Draft of Copyrights and Patents Handbook
September 6, 2002
RULES OF THUMB FOR DIGITIZING AND USING IMAGES FOR EDUCATIONAL PURPOSES

The CONFU Educational Fair Use Guidelines for Digital Images suggest that fair use requires our libraries to request permission to use images at the same time they are digitized. Our Rules of Thumb take a different approach, but in other respects, the Guidelines can provide helpful guidance and we recommend that you read them.

1. Is the image you wish to digitize readily available online or for sale or license at a fair price?
   - **If YES:** Point to, purchase or license the image. Do not digitize it unless you are in the process of negotiating a license. If you have a "contract pending," digitize and use the image in accordance with these Rules of Thumb until the license is finalized and you have received the licensed digital image.
   - **If NO:** Digitize and use the image in accordance with the following limitations:
     - Limit access to all images except "thumbnails" (define) to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.
     - Faculty members also may use images at peer conferences.
     - Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments etc., and may keep works containing images in their portfolios.

2. Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.
RULES OF THUMB FOR DIGITIZING AND USING OTHERS' WORKS IN MULTIMEDIA MATERIALS FOR EDUCATIONAL PURPOSES

The CONFU Fair Use Guidelines for Educational Multimedia suggest that fair use requires adherence to specific numerical portion limits, that copies of the multimedia work that includes the works of others should be strictly controlled, and that fair use "expires" after 2 years. Our Rules of Thumb acknowledge that these are important considerations, but the Guidelines numbers do not describe the outer limits of fair use. Despite their tightly controlled approach, the Guidelines can provide helpful guidance and we recommend that you read them.

Please keep in mind that the rights described here are rights to create unique works, but not to make multiple copies and give them out (distribute them).

1. Students, faculty and staff may
   - incorporate others' works into a multimedia work
   - display and perform a multimedia work

   **in connection with or creation of**
   - class assignments
   - curriculum materials
   - remote instruction
   - examinations
   - student portfolios
   - professional symposia.

2. Be conservative. Use only small amounts of other's works.

3. Don't make any unnecessary copies of the multimedia work.
RULES OF THUMB FOR MUSIC

The Guidelines for Educational Uses of Music negotiated in 1976 can provide helpful guidance and we recommend that you read them.

1. Limit copying as follows:
   - sheet music, entire works: only for performances and only in emergencies
   - sheet music, performable units (movements, sections, arias, etc.): only if out of print
   - student performances: record only for teacher or institutional evaluation or student's portfolio
   - sound recordings: one copy for classroom or reserve room use

2. Include
   - any copyright notice on the original
   - appropriate citations and attributions to the source.

3. Replace emergency copies with purchased originals if available.
RULES OF THUMB FOR RESEARCH COPIES

Limit research copies to

- single chapters
- single articles from a journal issue
- several charts, graphs, illustrations
- other similarly small parts of a work.
RULES OF THUMB FOR DIGITIZING AND USING OTHERS' WORKS IN ELECTRONIC RESERVES

The Fair Use Guidelines for Electronic Reserve Systems describe general limitations on the scope of materials that should be included, citation and notice requirements and access, use, storage and reuse of reserve materials. These Rules of Thumb are an abbreviated summary of the Guidelines terms which provide helpful guidance that we recommend you review.

1. Limit reserve materials to
   - single articles or chapters; several charts, graphs or illustrations; or other small parts of a work
   - a small part of the materials required for the course
   - copies of materials that personnel or the library already possesses legally (i.e., by purchase, license, fair use, interlibrary loan, etc.).

2. Include
   - any copyright notice on the original
   - appropriate citations and attributions to the source
   - a Section 108(f)(1) notice.

3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.
Sample Letters
Instructions for Permission Letters

1. Be sure to include your return address, telephone number, fax number, and the date at the top of the letter.

2. Spare no effort in confirming the exact name and address of the addressee. Call the person to confirm the copyright ownership.

3. Clearly state the name of your university and your position.

4. Precisely describe the proposed use of the copyrighted material. If necessary or appropriate, attach a copy of the article, quotations, diagrams, pictures, and other materials. If the proposed use is extensive, such as the general use of an archival or manuscript collection, describe it in broad and sweeping terms. Your objectives are to eliminate any ambiguities and to be sure the permission encompasses the full scope of your needs.

5. The signature form at the end of the sample letter is appropriate when an individual grants the permission. When a company (such as a publishing house) is granting the permission, use the following signature format:

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:
[Type name of company]
By:
Title:
Date:
Sample Letter #1 - Requesting Permission

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question.

Permissions Department  
[Publisher]  
[Address]  

Dear Permissions Editor:  

I am writing to ask your permission to (circle all that apply)  
• reprint  
• photocopy  
• quote from  
• incorporate into  
(circle all that apply)  
• multimedia courseware  
• online course materials  
• a dissertation/thesis  
• a print publication  

the following material:  

Author:  
Book Title:  
Journal Title:  
Page #(s)  
Figure/Image #(s)  
Table #(s)  
Vol.  
Issue

The material will be distributed/published as follows:  

Distribution:  
Publisher:  
Expected distribution/publication date:  
Expected length of work (number of images, etc.):  
Target market:  

If you do not solely control copyright in the requested materials, I would appreciate any information you can provide about others to whom I should write, including most recent addresses if available.  

Please initial any statement that applies:  

_______ I hereby represent that I have the authority to grant the permission requested herein.  
_______ I am the sole owner/author of the work.
Sample Letter #2 - Requesting Permission

[letterhead stationery or return address]

[Date]

[Name & address of addressee]

Dear [title, name]:

[If you called first, begin your letter: This letter will confirm our recent telephone conversation.] I am [describe your position] at [name of institution] University. I would like your permission to [explain your intended use in detail, e.g., reprint the following article in a coursepack for my course].

[Insert full citation to the original work.]

Please indicate your approval of this permission by signing the letter where indicated below and returning it to me as soon as possible. My fax number is set forth above. Your signing of this letter will also confirm that you own [or your company owns] the copyright to the above described material.

Thank you very much.

Sincerely,

[Your name and signature]

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Type name of addressee below signature line]

Date:
Sample Letter #3 - Copyright License

This Agreement (the “Agreement”) is made by and between ______________________ (“Owner”), and ______________________, with its principal place of business at ______________ (“Organization”).

RECITALS

A.  Organization is [describe organization], engaged in [describe activities that are relevant to the desire to license Owner's copyrighted material].

B.  Owner owns the copyright to certain materials relating to [describe activity] and is willing to allow Organization to copy and utilize such materials under the terms herein set forth.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the Owner and Organization agree as follows:

1.  This Agreement shall be effective as of (the “Effective Date”).

2.  Owner hereby grants Organization a non-exclusive right to copy certain materials described in Attachment A (the “Material”), in whole or in part, and to incorporate the Material, in whole or in part, into other works (the “Derivative Works”) for Organization’s internal use only.

3.  All right, title and interest in the Material, including without limitation, any copyright, shall remain with Owner.

4.  Owner shall own the copyright in the Derivative Works.

5.  This Agreement may be terminated by the written agreement of both parties. In the event that either party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

6.  Attachment A is incorporated herein and made a part hereof for all purposes.

7.  This Agreement constitutes the entire and only agreement between the parties and all other prior negotiations, agreements, representations and understandings are superseded hereby.

8.  This Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.
IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

[Full Name of Owner]

By:____________________
[Name] _________________
[Title]___________________
Date:____________________

[Full Name of Organization]

By:____________________
[Name] _________________
[Title]___________________
Date:____________________
Sample Letter #4 - Requesting Non-Exclusive Copyright License

[Date]

[Addressee]

Dear [Addressee]:

_________________ hereby grants you permission to copy, sell and distribute [or describe precisely the rights to be granted to licensee] copies of ________________ [describe precisely any identifying details of the works to be licensed, including, as appropriate, titles, authors, where and when previously published, etc.] and to incorporate the copyright work, in whole or in part, into derivative works for sale and distribution ________________ [describe any market limitations such as language, geography].

_________________ retains all other rights in the copyright work, including without limitation, the right to copy and distribute the work ___________ [include here agreed upon limitations to reserved rights, if any, such as the right to distribute only in certain markets or under certain circumstances.]

Sincerely,

[Authorized officer]
Sample Letter #5 - Permission Form

Date

Permissions Department
Publisher Name
Publisher Address

Dear Sir/Madam:

May I have permission to copy the following:

☐ Citation (Cite your source in full, listing author, title, edition, date published, and specific pages or other media to be copied)
☐ Copying format (photocopies, slides, computer diskettes, etc.)
☐ Number of copies
☐ Cost (mention non-profit educational use, free distribution, etc.)
☐ Distribution method (classroom handouts, coursebook, posting on school web page, etc.)
☐ Intended use (briefly describe the intended use of the material you are requesting permission to use)
☐ Date of use

If permission is granted, I will fully acknowledge the author and publisher by properly crediting the source. Please sign this form and return to me.

Sincerely,

(Signature)

Your name
Your title
School
School Address
Telephone, e-mail, or fax number

******************************************************************************

Permission granted_______________________________________
Date______
Conditions (if any)______________________________________
Signature_______________________________________________
Title___________________________________________________
Sample Letter #6 - Cease and Desist Letter

Dear [name]:

It has come to my attention that you have made an unauthorized use of my copyrighted work entitled [name of work] (the "Work") in the preparation of a work derived therefrom. I have reserved all rights in the Work, first published in [date], [and have registered copyright therein]. Your work entitled [name of infringing work] is essentially identical to the Work and clearly used the Work as its basis. [Give a few examples that illustrate direct copying.]

As you neither asked for nor received permission to use the Work as the basis for [name of infringing work] nor to make or distribute copies of same, I believe you have willfully infringed my rights under 17 U.S.C. Section 101 et seq. and could be liable for statutory damages as high as $100,000 as set forth in Section 504(c)(2) therein.

I demand that you immediately cease the use and distribution of all infringing works derived from the Work, and all copies of same, that you deliver to me all unused, undistributed copies of same, or destroy such copies immediately and that you desist from this or any other infringement of my rights in the future. If I have not received an affirmative response from you by [date give them about 2 weeks] indicating that you have fully complied with these requirements, I shall take further action against you.

Very truly yours,
Sample Letter #7 - Assignment of Copyright

This Agreement is made between The University of Texas at Austin, (“University”) and ________________________________{Name of Author} (“___________________”), whose address is ____________________________.     _________________________ represents and warrants that he/she is the sole creator and owner of a ______________________designed and created for the University’s Department of __________________________ (the “Work”) and holds the complete and undivided copyright interest to the Work.

For valuable consideration, receipt and sufficiency of which are hereby acknowledged, ______________________ and University agree as follows:

1. ______________________does hereby sell, assign, and transfer to University, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

2. ______________________agrees to execute all papers and to perform such other proper acts as University may deem necessary to secure for University or its designee the rights herein assigned.

In witness whereof, the parties have executed this Agreement, effective this _____ day of ____________________________ , 19___ .

The University of Texas at Austin

__________________________________
By: ____________________________

Title: ____________________________
Sample Agreements
Sample Agreement #1 - Software and Database License Agreement

Checklist

1. Does the license grant cover the uses your faculty, students and staff, as appropriate, will expect to make of the software or database information?

Indicate below the most extensive use of software or data you anticipate needing. The importance of protecting expected uses cannot be overstated! More information on this issue is available.

- _____ use software for internal purposes only
- _____ use software for any purpose
- _____ display (browse) data only
- _____ display, transmit and download portions of data for personal use
- _____ display, transmit, download and print portions of data for personal use
- _____ display, transmit, download and print and incorporate portions of data for personal use

2. Does the license grant cover your expected modes of access?

Indicate below the widest mode of access you anticipate needing.

- _____ from a single machine only
- _____ within a single building only
- _____ from multiple buildings on campus
- _____ from anywhere on campus
- _____ by way of remote dial-in or other remote access

3. Does the license agreement require the Customer to enforce its provisions against third parties, or otherwise try to affect the rights of third parties?

*Indicate below any provisions affecting third party rights.*

- _____ Agreement requires Customer to take responsibility for the actions of people who may use the software or database, but are not parties to the agreement, for example, students.

- _____ Agreement purports to restrict or limit the fair use rights (or other rights) of persons, like students, who are not parties to the agreement.

- _____ Agreement provides that Customer will ensure adherence to the terms of the contract by employees or third parties such as students (very commonly included in confidentiality provisions).

4. If the licensed material includes a database, will the library need archival rights with respect to superceded materials or after termination of the agreement?

- _____ Library will need archival rights.
5. Does the agreement include any provision that requires the Customer to indemnify the Vendor?

Indicate below any provisions that require the Customer to indemnify the Vendor.

_______ Agreement requires Customer to indemnify Vendor against harms that could result from Customer's use of data.

_______ Agreement requires Customer to indemnify Vendor against harms resulting from some other cause (any cause).

6. Does the agreement include an indemnity from the Vendor that its materials will not infringe the intellectual property rights of third parties?

An intellectual property indemnity will usually be in a form similar to the following, though it may be much more detailed:

Vendor will defend, indemnify and hold Customer harmless from any action based on a claim that Customer's use of the Database in accordance with this agreement, infringes any patent, copyright, or trade secrets of any third party.

_______ The agreement contains an indemnity from the Vendor regarding intellectual property claims.

Indicate below whether the agreement includes any of the following provisions

_______ A clause that requires the Customer to bring suit for claims under the agreement within a limited period of time (this is called a shortened statute of limitations).

_______ A clause that makes another state's law govern or control the contract.

_______ A clause that gives the Vendor a right to terminate without providing Customer any rights to terminate.

_______ A clause that provides for automatic renewal of the agreement or that requires Customer to notify Vendor shortly before the end of the contract term in order to renew.

7. Is the license a beta test agreement; for free or steeply discounted software; for research software; or otherwise atypical?

Indicate below whether an extenuating circumstance applies.

_______ Beta test software        _______ Nonprofit vendor

_______ Free software            _______ Steeply discounted software

_______ Database information from the public domain
Sample Agreement #2 - Software License Agreement

1. **Grant of License.**
   Subject to the terms of this Agreement, Vendor Corporation ("Vendor") grants you a non-exclusive, non-transferable license to use the EasyWay software program contained on the enclosed disk (the "Software"). You shall not sell, lease, assign, sublicense or otherwise transfer or disclose the Software in whole or in part, to any third party. Use of the Software is restricted to use throughout one physical campus location for educational purposes only.

2. **Term of License.**
   The license shall remain in effect until terminated. You may terminate the license at any time by destroying all copies, modifications, or merged portions of the Software. It will also terminate if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy the Software, any and all copies, modifications, or merged portions in any form.

3. **Copyright.**
   The Software and the accompanying documentation is owned by Vendor and is protected by United States copyright laws and international treaty provisions. You may not modify, disassemble, decompile or reverse engineer the Software or documentation, except as consented to in writing by Vendor. You may not sublicense, assign or transfer this license or the Software. This license will automatically terminate if you transfer possession of any copy of the Software to any other party.

4. **Acknowledgment and Indemnity.**
   YOU ACKNOWLEDGE THAT THE FAILURE TO PROPERLY OPERATE THE SOFTWARE LICENSED HEREUNDER, INCLUDING THE TIMELY AND ACCURATE INPUT AND TRANSMISSION OF ALL AND ANY DATA, COULD RESULT IN PROPERTY DAMAGE, PERSONAL INJURY OR DEATH THAT MIGHT HAVE BEEN AVOIDED IF THE SOFTWARE HAD BEEN PROPERLY OPERATED IN A TIMELY MANNER.

   You agree to indemnify and hold Vendor harmless from any and all claims, damage, loss, cost, expense or other liability for property damage, personal injury, wrongful death or any other claim resulting from the negligent failure to properly operate the Software, including the timely and accurate input and transmission of ALL and ANY data.

5. **Limited Warranty.**
   Vendor warrants that the Software will perform substantially in accordance with the accompanying Vendor end-use documentation for a period of sixty (60) days from the date of purchase. THIS WARRANT IS EXCLUSIVE AND VENDOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. Remedies.
If you believe that the Software has not performed in accordance with the foregoing limited warranty, you must notify Vendor in writing not more than 90 days after the end of the applicable warranty period. In the event such limited warranty has been breached, Vendor shall, at its option, either (i) repair or replace the Software free of charge, or (ii) accept the return of the Software and refund the purchase price therefor.

No Liability for Damages. IN NO EVENT WILL VENDOR BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOST SAVINGS, PERSONAL INJURY, WRONGFUL DEATH, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF VENDOR OR AN AUTHORIZED DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY, EXCEPT TO THE EXTENT OF THE REMEDIES DESCRIBED ABOVE IN THE EVENT OF THE BREACH OF THE LIMITED WARRANTY DESCRIBED ABOVE.

The parties agree that any dispute or default arising from this Agreement shall be governed by the internal law of the State of Illinois, and each party agrees to submit to the jurisdiction and venue of the Circuit Court of Cook County, Illinois.
Sample #3 - COPYRIGHT LICENSE AGREEMENT

This AGREEMENT is entered into this day of , 199 __, by and between Major Publishing House ("Licensor") and Multimedia Publications Inc. ("Licensee").

RECITALS

A. Licensor owns the copyright, title, trademarks and all other related rights in and to the work entitled "_____________" (hereinafter "Material").

B. Licensee is engaged in the development of interactive multimedia titles.

C. Licensee desires to obtain the rights to incorporate portions of the Material into one (1) new interactive multimedia work (hereinafter "Work").

NOW, THEREFORE, in consideration of the promises, conditions, covenants and warranties herein contained, the parties agree as follows:

1. Rights Granted.

Licensor hereby grants to Licensee, its successors and assigns, an exclusive right, license and privilege worldwide (the "Territory") to:

a. incorporate the Materials into the Work and reproduce, distribute, import and sell the Work on CD-ROM for the following platforms throughout the Territory; [itemize platforms]

b. utilize the phrase "incorporating excerpts from "]" on or in connection with the packaging, advertising, publicizing, marketing and distribution of the Work; and

c. publicly perform and authorize others to perform the Work (and those portions of the Material incorporated therein) in connection with the advertising, publicizing, marketing, distribution and use of the Work.

2. Licensor's Rights and Obligations.

a. Licensor warrants and represents that it owns all right, title and interest in and to the Material.

b. Licensor reserves unto itself all rights of every kind and nature except those specifically granted to Licensee herein; provided, that Licensor shall not grant any rights to use the Material or any portion hereof in any other interactive multimedia work without Licensee's written consent, unless Licensee fails to release Work to the public on or before [date].

3. Licensee's Rights and Obligations.

a. Licensee shall be solely responsible for providing all funding and technical expertise for the development and marketing of the Work.

b. Licensee shall be the sole owner of the Work and all proprietary rights in and to the Work; except, such ownership shall not include ownership of the copyright in and to the Material or any other rights to the Material not specifically granted in Section 1 above.

4. Payments.

a. For the rights granted by Licensor herein, Licensee shall pay to Licensor a royalty calculated as follows:

   [ ] per unit on the first [ ] units of the Work sold by Licensee.
   [ ] per unit on the next [ ] units of the Work sold by Licensee.
   [ ] per unit on all sales of the Work over [ ] units.

Draft of Copyrights and Patents Handbook
September 6, 2002
These royalties are based upon a suggested retail price for the Work of US$ and will be adjusted up or down on a prorata basis should the suggested retail price of the Work change. However, under no circumstances shall royalties to Licensor be less than [ ] per unit.

b. Licensee shall pay to Licensor [ ] on the signing of this agreement as an advance against the royalties set forth in Section 4.a above.

c. Licensee shall render to Licensor on a quarterly basis, within forty-five (45) days after the end of each calendar quarter during which the Work is sold, a written statement of the royalties due to Licensor with respect to such Work. Such statement shall be accompanied by a remittance of the amount shown to be due. Licensor shall have the right, upon reasonable request, to review those records of Licensee necessary to verify the royalties paid. Any such audit will be conducted at Licensor's expense and at such times and in such a manner as to not unreasonably interfere with Licensee's normal operations. If a deficiency is shown by such audit, Licensee shall immediately pay that deficiency.

5. Warranty and Indemnification.

a. Licensor warrants and represents that it has the full right, power and authority to enter into this Agreement and to grant the rights granted herein; that it has not previously licensed the interactive multimedia rights to the Material to any third party; and that Licensee's inclusion and use of the Material will not violate any rights of any kind or nature whatsoever of any third party. Licensor shall indemnify and hold harmless Licensee, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by Licensor herein.

b. Licensee shall indemnify and hold harmless Licensor, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any claim that the Work infringes any intellectual property rights or other rights of any third party, except to the extent such claim arises from a breach by Licensor of Section 5.a above.

6. Term and Termination.

a. The term of this Agreement shall be fifteen (15) years from the date of execution by both parties, unless terminated earlier pursuant to this section.

b. This Agreement shall be subject to termination at the election of Licensor, in the event that Licensee fails to begin distributing Work within one (1) year of the date on which all parties have signed this Agreement, by written notice given by Licensor to Licensee within thirty (30) days of the running of that one (1) year period.

c. This Agreement shall be subject to termination at the election of Licensor, by written notice to Licensee, where there has been a default in the due observance or performance of any material covenant, condition or agreement herein by Licensee, and such default has continued for a period of thirty (30) days after written notice specifying the same shall have been given to Licensor.

d. This Agreement shall be subject to termination at the election of Licensee, by written notice to Licensor, where there has been a default in the due observance or performance of any material covenant, condition or agreement herein by Licensor and such default has continued for a period of thirty (30) days after written notice specifying the same shall have been given to Licensee.

e. Upon termination or expiration of this Agreement, Licensee shall cease reproducing, advertising, marketing and distributing the Work as soon as is commercially feasible. Notwithstanding the foregoing, Licensee shall have the right to fill existing orders and to sell off existing copies of the
Work then in stock, provided, the sell-off period shall not exceed six (6) months from the date of termination. Licensor shall have the right to verify the existence and validity of the existing orders and existing copies of the Work then in stock upon reasonable notice to Licensee.

f. Termination or expiration of this Agreement shall not extinguish any of Licensee's or Licensor's obligations under this Agreement (including, but not limited to, the obligation to pay royalties) which by their terms continue after the date of termination or expiration.


a. Successors/Assigns.
This Agreement is binding upon and shall inure to the benefit of the respective successors and/or assigns of the parties hereto.

b. Integration.
This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be modified or amended except by written agreement executed by the parties hereto.

This Agreement shall be governed by the laws of the State of New York, applicable to agreements made and to be wholly performed therein.

d. Notice.
The address of each party hereto as set forth below shall be the appropriate address for the mailing of notices, checks and statements, if any, hereunder. All notices shall be sent certified or registered mail and shall not be deemed received or effective unless and until actually received. Either party may change their mailing address by written notice to the other.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be executed the day and year set forth above.

[Name and Address of Licensor]

By:

Title:

[Name and Address of Licensee]

By:

Title:
Sample #4 - Multimedia Development and Distribution Agreement

This License Agreement ("Agreement") is entered into by and between MULTIMEDIA VENTURE, INC. ("Licensee"), a Delaware corporation with its principal place of business at Redwood Drive, Beverly Hills, California 90210 and MAJOR NATIONAL PUBLICATION, INC. ("Licensor"), a New York corporation with its principal place of business at East 85th Street, New York, New York 10005.

RECITALS

A. Licensor is in the business of compiling, developing, writing, and publishing information in printed and pictorial form.

B. Licensee is in the business of manufacturing, assembling, importing, and distributing products consisting of computer software and data.

C. Licensee desires to incorporate Licensor's information into its computer products.

D. Licensor wishes to provide its information to Licensee for such purpose.

NOW THEREFORE, Licensor and Licensee agree as follows:

1. Definitions

1.1 The term "fixed" and "derivative works" as used herein shall have the meaning ascribed to them in Section 101 of the U.S. Copyright Act, 17 U.S.C. _ 101 et al.

1.2 "Code" shall mean any computer programs which operate in conjunction with the Product and cause the Product to function. A multimedia work can be thought of as comprising two components: 1) the works which it embodies, i.e., the Work; and 2) computer software used to manipulate the Work, i.e., Code.

1.3 "CD-ROM" shall mean a compact-disc, read-only platter, useable in the Apple Macintosh platform.

1.4 "CD-ROM Version" shall mean a copy of a Work, as defined herein, fixed on CD-ROM.

1.5 "Licensor Encyclopedia" shall mean the full text, tables, and photographs described in Exhibit A hereto [omitted].

1.6 "Net Revenue" shall mean gross revenues that Licensee is entitled to receive from sales; less credits, returns, shipping charges, sales taxes, and custom duties.

1.7 "Premium" shall mean an item given or offered for sale, with or without a directly identifiable purchase price, as an incentive for the recipient to enter into or consider entering into a transaction.

1.8 "Product" shall mean units of software and data which are manufactured, assembled, and distributed by Licensee and which incorporate CD-ROM Versions.

1.9 "Trademark" shall mean Licensor's trademark and logo "Licensor."

1.10 "Works" shall mean the Licensor's Encyclopedia and any other materials and information provided by Licensor to Licensee for use in creation of the Product.

2. Grant of License.

Subject to the conditions set forth herein, Licensor grants to Licensee the following:

Draft of Copyrights and Patents Handbook
September 6, 2002
2.1 an exclusive, nontransferable license to convert unaltered copies of the Work into CD-ROM Versions;
2.2 an exclusive, nontransferable license to incorporate the CD-ROM Versions into Products;
2.3 an exclusive, nontransferable license to distribute Products to third-party distributors, retail establishments, original equipment manufacturers (OEMs), and directly to end-users; and
2.4 an exclusive, nontransferable license to use the Trademark in the promotion, sale, and distribution of the Products.

3. Reservation of Rights.
All other rights with respect to the Works, whether now existing or which may hereafter come into existence, which are not expressly granted to Licensee herein, including but not limited to print publication, electronic publication in all media and formats other than those addressed herein, and video, movie, and audio rights, are reserved to Licensor.

4. Territory.
Licensee's rights hereunder will be worldwide.

5. Necessary Permissions.
Licensor has, or shall obtain, the rights and permissions necessary to use the Works as contemplated in this Agreement. Licensor shall provide to Licensee all attributions which must be included in the Products.

Licensee shall perform all conversions, design, and manufacturing associated with the manufacture, sale, and distribution of the Products.

7. Marketing and Promotion.
Licensee shall use best efforts to promote sales of the Products.

8. Copyright
8.1 Licensee hereby confirms that Licensor owns the entire title, right, and interest in and to the CD-ROM Versions, the Products, the audio-visual displays generated by the Products, and the user interfaces of the Products whether or not they constitute "works made for hire" as defined in 17 U.S.C. Section 201(b), including, without limitation, the copyrights thereto throughout the world together with any and all renewals and extensions thereof.

8.2 Licensee agrees to take all actions and cooperate as is necessary to protect Licensor's copyrights in the CD-ROM Versions, the Products, the audio-visual displays generated by the Products, and the user interfaces of the Products and further agrees to execute any documents that might be necessary to perfect Licensor's ownership of copyrights in such materials.

8.3 Licensee shall cause an appropriate copyright notice to appear in each copy of the Products (or such copyright notice as Licensor may specify or as may be required by third parties in connection with rights and permissions obtained by Licensor.)
9. Trademark

9.1 Licensee shall not use or authorize the use of the Trademark in connection with the Products or the advertising and promotion thereof except in such manner as Licensor shall have approved in each instance.

9.2 Each Product shall bear the Trademark in its title as Licensor may in its discretion specify.

9.3 Licensee agrees that all use by Licensee of the Trademark shall inure to Licensor's benefit. In those countries where Licensor, in its sole opinion, deems it necessary, Licensee will be recorded as a registered user of the Trademark at Licensor's control and expense and Licensee will cooperate with Licensor to effect such recording.

9.4 In the event that Licensee learns of any infringement, threatened infringement, or passing-off of the Trademark, or that any third party claims or alleges that the Trademark is liable to cause deception or confusion to the public, Licensee shall notify Licensor giving particulars thereof, and Licensee shall provide necessary information and assistance to Licensor in the event that Licensor decides that proceedings should be commenced or defended. The Licensor shall have the sole right to commence an action against an infringer and such action shall be at its own cost and expense. Any recovery received by Licensor as a result of such action shall be retained solely by the Licensor.

10. Right of Approval

10.1 Licensee acknowledges that if the Products manufactured, distributed, or sold by it are of inferior quality in image, design, material, or workmanship, the substantial good will which Licensor has built and now possesses in the Works and in the Trademark will be impaired. For those reasons, and to protect all rights in and to the Works which Licensor has now or may in the future acquire, Licensor will have the full and final right of written approval, not to be unreasonably withheld, concerning Licensee's use of the Works and the manufacture, distribution, and sale of the Products produced pursuant to this Agreement.

10.2 Licensee, prior to the manufacture, distribution, and sale of the Products, will submit to Licensor for its written approval two samples of each of the Products. Licensor shall exercise its rights of approval in its sole discretion, and Licensee acknowledges and agrees that Licensor will have final editorial control over the Products and their contents. Licensee shall, thereafter, at least once during each year during the Term of this Agreement provide Licensor with samples of the Products for approval.

11. Selling Price and Terms.

The price or prices at which the Products are offered for sale shall be determined by Licensee in consultation with Licensor.

12. Royalties

12.1 Royalty Payments: Retail

Royalties will be paid for each Product which is distributed through retail channels. The royalty shall be [ ] percent (%) of Net Revenue for each Product shipped.

12.2 Royalty Payments: Direct Sales

Royalties will be paid for each Product sold directly to end-user customers. The royalty shall be [ ] percent (%) of Net Revenue for each Product shipped.
12.3 Royalty Payments: Premiums
Royalties will be paid for each Product which is distributed as a Premium. The royalty for Premiums shall be [ ] dollars ($ ) for each Product shipped.

12.4 Royalty Payments: Copies
Royalties shall not be paid on any copies of Products which are returned, or furnished free of charge for promotion, display, or similar purposes.

Licensee shall pay to Licensor as a nonrefundable advance against royalties with regard to the sales of Products [ ] dollars ($) to be paid to Licensor by Licensee upon the first shipment of Products. Royalties earned after this payment for the sale of Products shall first be applied against this advance and thereafter paid to Licensor.

14. Accounting; Timing of Payments; Statements; Audits
14.1 Licensee shall keep accurate records of all transactions relating to the Products. Such records shall clearly and separately set forth all relevant information by Product type; including, without limitation, the number of units shipped and the number of units furnished free of charge for promotion.

14.2 Licensee shall allow Licensor or its agent or agents, upon five (5) days' written notice, to inspect, audit, and analyze all of Licensee's records as described herein.

15. Term of Agreement.
This Agreement shall continue in force for two (2) years from the date hereof (the "Initial Term").

16. Representations and Warranties; Indemnity Obligations
16.1 Licensor represents and warrants to Licensee that Licensor has the full right, power, and authority to enter into this Agreement, and to grant the rights granted to Licensee hereunder.

16.2 Licensee warrants and represents that:
(1) the Products shall not contain any libelous material;

(2) the Code and any user interfaces which it generates shall be of the highest quality; and

(3) the Code shall not infringe any trademark, copyright, patent, trade secret, or any other intellectual property right of any third party.

16.3 THE WARRANTIES STATED ABOVE ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES MADE BY THE PARTIES. BOTH PARTIES WAIVE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16.4 Licensor shall indemnify Licensee and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorney fees and all related costs and expenses) incurred by Licensee as a result of any claim, judgment, or adjudication against Licensee in which it is alleged that the duplication or
distribution of the Licensor Encyclopedia provided by Licensor hereunder infringes any trademark, copyright, right of publicity, trade secret, or any other intellectual property right of any third party, provided that Licensee (a) promptly notifies Licensor in writing of any such claim and gives Licensor the opportunity to defend or settle any such claim at Licensor's expense and (b) cooperates with Licensor, at Licensor's expense, in defending or settling such claim.

16.5 Licensee shall indemnify Licensor and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorney fees and all related costs and expenses) incurred by Licensor as a result of any claim, judgment, or adjudication against Licensor arising from (i) any breach or allegation which, if true, would constitute a breach of any of Licensee's obligations hereunder; (ii) the actions or omissions of Licensee, its officers, directors, employees, agents, or assigns in connection with the exercise of their rights hereunder; (iii) any modifications to the Licensor Encyclopedia by Licensee (other than modifications approved by Licensor); (iv) an allegation that the Code infringes any trademark, copyright, right of publicity, trade secret, or any other intellectual property right of any third party; (v) any allegation based on the failure of the Product or on injury, death, or damage caused by such Product; or (vi) any representation or warranty made by Licensee in connection with this Agreement or the marketing or distribution of the Products, provided that Licensor (a) promptly notifies Licensee in writing of any such claim and gives Licensee the opportunity to defend or settle any such claim at Licensee's expense and (b) cooperates with Licensee, at Licensee's expense, in defending or settling such claim.

17. Service and End-User Support.

Licensee agrees it will provide to any customers to whom it distributes the Products written notice that Licensee will provide customer service and end-user support, and Licensee agrees to provide service in response to any customer questions arising from the use of the Products. Notwithstanding the foregoing, Licensee shall refer all customer calls related to the content of the Works to Licensor.

18. Limitation of Liability.

With the exception of indemnification obligations, or a breach of the provisions of the Trademark restrictions herein, neither party shall in any circumstances be liable for any loss of business or profits, or for any consequential, incidental, punitive, or similar damages, or, other than as set forth herein, for the claims of damages made by any third party for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, even if it has been advised of the possibility of such damages.

19. Right to Terminate for Breach.

Should either party materially breach any terms or conditions of this Agreement, in addition to all other legal rights and remedies available to the nonbreaching party, the nonbreaching party may terminate this Agreement after thirty (30) days' written notice of said breach has been delivered to the breaching party, unless said breach will have been remedied within said thirty (30) days. In the event of Licensor's termination of the Agreement based on Licensee's breach, in addition to any other rights and remedies available to Licensor, Licensor shall be entitled to keep all advances paid hereunder.

20. Obligations of Licensee on Termination.

Upon expiration of, or termination of, this Agreement for any reason, Licensee shall return all copies of the Works in all media, and shall erase or destroy any Work or portion thereof contained in all types of computer memory, and so warrant in writing to Licensor within thirty (30) days of termination or expiration of this Agreement. Notwithstanding the foregoing, in the event of a termination of this Agreement prior to expiration for a reason other than Licensee's nonpayments under this Agreement, Licensee may distribute Products in its possession at termination for a period of thirty (30) days, and shall pay royalties for such distribution as provided herein.
21. Effect of Termination.

Neither termination of this Agreement nor waiver of any right to terminate under this Agreement shall impair or limit any additional rights or remedies that either Licensor or Licensee may have at law or in equity.

22. Bankruptcy.

Either party may terminate this Agreement, effective immediately upon written notice, if (1) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (2) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days; or (3) the other party is adjudged bankrupt or insolvent. Upon such termination by either party, all rights granted to Licensee herein shall terminate.


23.1 Governing Law

This Agreement shall be governed by the laws of the State of New York, and any action taken by either party resulting from a dispute regarding the terms of this Agreement shall be heard exclusively in the federal or state courts located in New York City.

23.2 Status of Parties

Licensee acknowledges and agrees that Licensee is an independent contractor, and is not an employee, agent, or partner of Licensor.

23.3 Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. Neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written consent of the other. Consent for Licensor's assignment shall not be unreasonably withheld.

23.4 Entire Agreement

This Agreement constitutes the entire understanding of the parties as to the matters set forth herein. No modification of this Agreement shall be valid or binding unless executed in writing by each of the parties on or after the date hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereof.

LICENSOR

By:

Title:

LICENSEE

By:

Title:
Sample Agreement #5- College Personnel Ownership Agreement

Educational Course Materials

This Agreement made the [date] day of [month], 19[year], by and between [name of author] ("Author," and if there is more than one author then all of them collectively) and [name of institution] ("University").

Recitals

The Author will be the sole contributor of copyrightable expression to the educational course materials anticipated to result from this project. The University will be contributing significant kinds and/or amounts of University resources. The Parties recognize that under law, the University is obligated to obtain appropriate consideration for the transfer of state resources. In furtherance of their mutual objectives, the Parties agree to allocate certain of their rights and responsibilities as set forth in this agreement.

THE AUTHOR AND THE UNIVERSITY AGREE THAT:

1. Rights Granted

[Choose one of the following paragraphs.]

Nonprofit Educational Uses. The Author hereby grants to the University for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, and publish for nonprofit educational purposes the educational course materials entitled: [name of work] (hereinafter called "Work").

or

Non-exclusive Commercial License. The Author hereby grants to the University for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: [name of work] (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

or

Exclusive Commercial License. The Author hereby grants to the University for the full term of this agreement the exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: [name of work] (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

2. Delivery of the Work

(a) The Author will prepare and deliver to the University on or before [date] the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the University.
(b) If the Author fails to deliver the Work on time, the University will have the right to terminate this agreement and to recover from the Author any sums or other resources advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

3. Quoted Material

With the exception of short excerpts from others' works, which constitute fair use, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense after consultation with the University and will file them with the University at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

4. Publication of the Work

The Work shall be distributed, transmitted or published by the [University/Author] as soon as circumstances permit after receipt, at its own expense, in such manner as the [University/Author] shall deem appropriate.

5. Copyright

The Author authorizes the University to register copyright in the Work in the Author's name in the United States and elsewhere as the University may elect.

6. Author's Warranty

(a) The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that he or she has made a good faith effort to follow the U.T. System Copyright Policy and that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

(b) To the extent that an act of the Author that results in a claim of copyright infringement was authorized by the U.T. System Copyright Policy, in accordance with that Policy and to the extent authorized by the Constitution and laws of the State of Texas, the U.T. System will defend, indemnify and hold harmless the Author against all claims, suits, costs, damages and expenses that the Author may sustain by reason of such infringement or violation by the Work of any copyright.

(c) In all other cases, the Author will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Work or any infringement or violation by the Work of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due the Author under this agreement.
7. Consideration

(a) University will contribute the following resources to the creation of the Work:

[Materials, Hardware, Software, Technical Assistance, Other Assistance, Videotaping, Programming, Teaching Load Credit, or Funding.]

[Choose one of the following paragraphs.]

(b) The parties shall share in any revenues from the commercialization of the Work as follows: University will first recover its resource contribution in the amount of $___, then the Parties shall share profits 50% to the University and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The parties shall share in any revenues from the commercialization of the Work as follows: The Parties shall share profits 50% to the University and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The Parties do not anticipate commercial exploitation of the Work and so have not addressed University's recovery of its contribution or allocated royalty percentages to either Party.

8. Subsidiary Rights

[Choose the paragraph below that corresponds to the paragraph chosen for Section 1.]

Nonprofit Educational Uses. The University has been granted a limited right to use the Work for nonprofit educational purposes only and therefor does not need subsidiary rights and all such rights are retained by the Author.

or

Non-exclusive Commercial License. The University shall have the right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

or

Exclusive Commercial License. The University shall have the sole right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights
9. Revisions

The Author shall retain the right to revise the Work [at one year intervals] during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within ninety (90) days upon the receipt of a written request from the University. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within ninety (90) days after the University has requested it, or should the Author be deceased, the University may have the revision made and charge the cost against the Author's royalties and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

10. Term and Termination

(a) This agreement shall remain in effect for [three (3)] years unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term[s] agreed upon pursuant to Section 10(d), or upon earlier termination in accordance with Sections 10(b) or (c), the rights granted in the Work shall revert to the Author, subject to retention by the University of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this agreement shall terminate upon expiration of the sixty (60) day period.

(c) The Work shall be considered to be "in use" if it is made available by University for distribution or transmission, offered for sale or licensed for distribution, transmission or sale during the term of this agreement. If the University fails to keep the Work in use and the Author makes a written request of the University to terminate this agreement, the University shall notify the Author in writing of the University's decision in the matter within sixty (60) days after receipt of the written request. If the University elects to keep the Work in use, it shall have six (6) months thereafter to comply. If the University elects not to keep the Work in use or fails to comply with the six (6) months deadline (unless the failure is due to circumstances beyond its control), then this agreement shall terminate.

(d) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.
(a) This Agreement shall remain in effect for [three (3)] year(s) unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 10(c), or upon earlier termination in accordance with Section 10(b), the rights granted in the Work shall revert to the Author, subject to retention by the University of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(b) In the event that either Party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

(c) Upon the expiration of the term of this Agreement, the parties may agree to renew this Agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.

11. Options/Contracts with Third Parties

Nothing contained in Section 10 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the University in the income resulting from such agreements.

12. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the University concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

13. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the University shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.
Author: The University of Texas [at (name of component)]
Address: By Authorized Officer:
Author:
Address:
Sample Agreement #6 - JOINT CREATION AND OWNERSHIP AGREEMENT

Educational Course Materials

This Agreement is made the [date] day of [month], 19[year], by and between [name of author] ("Author," and if there is more than one author then all of them collectively) and [name of institution] ("University").

Recitals

The Author and University shall each contribute copyrightable expression to and intend to be joint owners of the educational course materials anticipated to result from this collaboration (the "Work"). The Parties recognize that under law, each could act independently of the other in exploiting the Work, with only an obligation to account to each other for a share of any profits. In furtherance of their mutual objectives, the Parties instead will allocate certain of their jointly held rights and responsibilities as set forth in this agreement.

THE AUTHOR AND THE UNIVERSITY AGREE THAT:

1. Rights Granted

[Choose this first set of paragraphs if the parties want only one or the other to have the right to license the Work to others.]

(a) [Author/University] (the "Exclusive Licensor") shall have the exclusive right to license the Work to others, including, without limitation, the rights described in Section 8.

(b) [Author/University/Each Party] shall retain a nonexclusive right to use the Work for non-commercial educational purposes.

(c) The Parties shall share in royalties, if any, as set forth in Section 7.

[Choose this second set of paragraphs if both parties will have the right to license the Work or if commercial exploitation is not likely at all.]

(a) The Parties have not chosen to allocate the exclusive right to commercially exploit the Work to either Party. Both retain all their rights to license the Work to others and to use the Work for non-commercial purposes.

(b) The Parties shall share in royalties from any commercial exploitation by either of them as set forth in Section 7.

2. Completion of Author's Contribution to the Work

(a) The Author will prepare and deliver to the University on or before [date] the Author's contribution to the Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the University.

(b) If the Author fails to deliver Author's contribution on time, the University will have the right to terminate this agreement and to recover from the Author any sums or other resources advanced in connection with the Work. Upon such termination, the Author may not have the contribution to the Work published elsewhere until such advances have been repaid.

Draft of Copyrights and Patents Handbook
September 6, 2002
3. Quoted Material

With the exception of short excerpts from others' works, which constitute fair use, Author's contribution to the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense after consultation with the University and will file them with the University at the time the contribution is delivered. Any obligations associated with permissions will be the responsibility of the Author.

4. Publication of the Work

The Work shall be distributed, transmitted or published by the [University/Author] as soon as circumstances permit after receipt, at its own expense, in such manner as the [University/Author] shall deem appropriate.

5. Copyright

The Author authorizes the University to register copyright in the Work in the Author's and University's names in the United States and elsewhere as the University may elect.

6. Author's Warranty

(a) The Author warrants that he or she is the sole owner of the Author's contribution to the Work and has full power and authority to make this agreement; that he or she has made a good faith effort to follow the U.T. System Copyright Policy and that the contribution does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

(b) To the extent that an act of the Author that results in a claim of copyright infringement was authorized by the U.T. System Copyright Policy, in accordance with that Policy and to the extent authorized by the Constitution and laws of the State of Texas, the U.T. System will defend, indemnify and hold harmless the Author against all claims, suits, costs, damages and expenses that the Author may sustain by reason of such infringement or violation by the contribution of any copyright.

(c) In all other cases, the Author will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Author's contribution to the Work or any infringement or violation by the contribution of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due the Author under this agreement.

7. Consideration

(a) University will contribute the following resources to the creation of the Work:

[Materials, Hardware, Software, Technical Assistance, Other Assistance, Videotaping, Programming, Teaching Load Credit, or Funding.]
[Choose one of the following paragraphs.]

(b) The parties shall share in any revenues from the commercialization of the Work as follows: University will first recover its resource contribution in the amount of $__, then the Parties shall share profits 50% to the University and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The parties shall share in any revenues from the commercialization of the Work as follows: The Parties shall share profits 50% to the University and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The Parties do not anticipate commercial exploitation of the Work and so have not addressed University's recovery of its contribution or allocated royalty percentages to either Party.

8. Subsidiary Rights

[Choose one paragraph depending on which set of paragraphs you chose for Section 1.]

The Exclusive Licensor shall have the right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

or

The Parties do not anticipate commercial exploitation of the Work and so have not allocated the exclusive right to license subsidiary rights to either Party.

9. Revisions

The Author shall retain the right to revise the Author's contribution to the Work [at one year intervals] during the term of this agreement in accordance with academic standards. The Author further agrees to update the contribution within ninety (90) days upon the receipt of a written request from the University. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within ninety (90) days after the University has requested it, or should the Author be deceased, the University may have the revision made and charge the cost against the Author's royalties and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.
10. Term and Termination

[Choose this first set of paragraphs if the parties expect to commercially exploit the Work and have given either one or the other the exclusive right to license the Work, in accordance with what you choose in Section 1.]

(a) This agreement shall remain in effect for [three (3)] years unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 10(d), or upon earlier termination in accordance with Sections 10(b) or (c), the rights granted in the Work shall revert to those provided to joint owners under law.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this agreement shall terminate upon expiration of the sixty (60) day period.

(c) The Work shall be considered to be "in use" if it is made available by the Exclusive Licensor for distribution or transmission, offered for sale or licensed for distribution, transmission or sale during the term of this agreement. If the Exclusive Licensor fails to keep the Work in use and the other party makes a written request to terminate this agreement, the Exclusive Licensor shall notify the other party in writing of its decision in the matter within sixty (60) days after receipt of the written request. If the Exclusive Licensor elects to keep the Work in use, it shall have six (6) months thereafter to comply. If the Exclusive Licensor elects not to keep the Work in use or fails to comply with the six (6) months deadline (unless the failure is due to circumstances beyond control), then this agreement shall terminate.

(d) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.

[Choose this second set of paragraphs if the parties do not expect to commercially exploit the Work or if neither has the exclusive right to license the Work to others under Section 1.]

(a) This Agreement shall remain in effect for [three (3)] year(s) unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 10(c), or upon earlier termination in accordance with Section 10(b), the rights granted in the Work shall revert to those provided to joint owners under law.

(b) In the event that either Party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

(c) Upon the expiration of the term of this Agreement, the parties may agree to renew this Agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.
11. Options/Contracts with Third Parties

Nothing contained in Section 10 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of either Party in the income resulting from such agreements.

12. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the University concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

13. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the University shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

Author: The University of Texas [at (name of component) ]
Address: By Authorized Officer:

Author:
Address:
Sample Agreement #7 - Contribution to a Collective Work

Educational Course Materials

This Agreement made the [date] day of [month], [year], by and between [name of contributor] ("Contributor," and if there is more than one contributor, then all of them collectively) and [name of institution] ("University").

Recitals

A. University plans to publish a [course/series of courses] entitled "[name of course or degree program]" (the "[Collective Work/Online Degree Program]").
B. Contributor has written or co-written one or more elements of the [Collective Work/Online Degree Program].

THE CONTRIBUTOR AND THE UNIVERSITY AGREE THAT:

1. Rights Granted

   All contributions of original manuscripts or other original materials submitted in connection with this Agreement by the Contributor (the "Contribution") shall remain the property of the Contributor. Contributor grants University the non-exclusive right to use the Contribution as set forth in this Agreement. University shall own the entire right, title and interest in and to the copyright in the [Collective Work/Online Degree Program] and in and to all works based upon, derived from, or incorporating the [Collective Work/Online Degree Program] and in and to all rights corresponding to the foregoing throughout the world.

2. Delivery of Contribution

   (a) The Contributor will deliver to the University, on or before [date], the Contribution (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the [Collective Work/Online Degree Program]) in form and content [in accordance with prevailing academic standards/satisfactory to University].

   (b) If the Contributor fails to deliver the Contribution on time, the University will have the right to terminate this Agreement.

3. Quoted Material

   With the exception of short excerpts from others' works, which constitute fair use, the Contribution will contain no material from other copyrighted works without a written consent of the copyright holder. The Contributor will obtain such consents at his or her own expense after consultation with the University and will file them with the University at the time the Contribution is delivered. Any obligations associated with permissions will be the responsibility of the Contributor.

4. Publication of the [Collective Work/Online Degree Program]

   The [Collective Work/Online Degree Program] may be distributed, transmitted or published by the University, at its own expense, in such manner as the University shall deem appropriate.
5. Copyright

The University, in its sole discretion, will decide whether to register copyright for the [Collective Work/Online Degree Program] in its own name and at its own expense.

6. Contributor's Warranty

The Contributor warrants that he or she is the sole owner of the Contribution and has full power and authority to make this agreement; that the Contribution does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. The Contributor will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Contribution or any infringement or violation by the Contribution of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due the Contributor under this agreement.

7. Consideration

In consideration for the grant of rights set forth in Section 1 and delivery of the Contribution in accordance with the provisions of this Agreement, University shall provide [describe what University is providing to Contributor in return for the Contribution].

8. Revisions

The Contributor shall retain the right to revise the Contribution [at one year intervals] during the term of this agreement in accordance with academic standards. The Contributor further agrees to revise the Contribution within one year upon the receipt of a written request from the University. The provisions of this agreement shall apply to each revision of the Contribution by the Contributor as though that revision were the Contribution being published for the first time under this agreement. In the event that the Contributor is unable or unwilling to provide a revision within one year after the University has requested it, or should the Contributor be deceased, the University may have the revision made and charge the cost against sums due the Contributor under Section 7 above, if any, and may display, in the revised Contribution and in advertising, the name of the person or persons who perform the revision.

9. Term and Termination

(a) This agreement shall remain in effect for [three (3)] years unless terminated earlier in accordance with this Section 9. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 9(c) or upon early termination in accordance with Section 9(b), University shall retain a non-exclusive right to use the Contribution as University, in its sole discretion, may desire, including, without limitation, the right to create derivative works of (to revise, modify and adapt) the Contribution.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this agreement shall terminate upon expiration of the sixty (60) day period.
(c) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.

10. Options/Contracts Third Parties

Nothing contained in Section 9 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the University in the income resulting from such agreements.

11. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Contributor and the University concerning this Contribution, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

12. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Contributor and to the University shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

Contributor: The University of Texas [name of component or System]

Address: By Authorized Officer:

Contributor:

Address:
Sample Agreement #8 - WORK MADE FOR HIRE AGREEMENT

Educational Course Materials

This Agreement made the [date] day of [month], 19[year], by and between [name of author] ("Author," and if there is more than one author, then all of them collectively) and [name of institution] ("University").

THE AUTHOR AND THE UNIVERSITY AGREE THAT:

1. Title and Copyright Assignment

(a) Author and University intend this to be a contract for services and each considers the products and results of the services to be rendered by Author hereunder (the "Work") to be a work made for hire. Author acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of University.

(b) If for any reason the Work would not be considered a work made for hire under applicable law, Author does hereby sell, assign, and transfer to University, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in an to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

(c) If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Author hereby waives and appoints University to assert on the Author's behalf the Author's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions or the Work, in any medium, for university purposes.

(d) Author agrees to execute all papers and to perform such other proper acts as University may deem necessary to secure for University or its designee the rights herein assigned.

2. Delivery of the Work

(a) The Author will deliver to the University on or before [date] the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the University.

(b) If the Author fails to deliver the Work on time, the University will have the right to terminate this agreement and to recover from the Author any sums advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

3. Quoted Material

With the exception of short excerpts from others' works, which constitute fair use, the
Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense after consultation with the University and will file them with the University at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

4. Author's Warranty

The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. The Author will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Work or any infringement or violation by the Work of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due the Author under this agreement.

5. Consideration

In consideration for delivery of the Work in accordance with the provisions of this Agreement, University shall pay Author [amount].

6. Revisions

The Author shall retain the right to revise the Work [at one year intervals] during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within ninety (90) days upon the receipt of a written request from the University. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within ninety (90) days after the University has requested it, or should the Author be deceased, the University may have the revision made and charge the cost against sums due the Author under Section 5 above, if any, and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

or

This paragraph has been deleted because the Author's contribution is not a work expressing academic expertise requiring periodic review and revision.

7. Term and Termination

(a) This agreement shall remain in effect for [three (3)] years unless terminated earlier in accordance with this Section 7.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this agreement shall terminate upon expiration of the sixty (60) day period.

(c) Upon the expiration of the term of this agreement, the parties may agree to renew this
agreement for an additional [three (3)] year term, upon the same terms and conditions as set forth herein.

8. Options/Contracts with Third Parties

Nothing contained in Section 7 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the University in the income resulting from such agreements.

9. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the University concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

10. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the University shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

Author: The University of Texas [name of component]

Address: By Authorized Officer:

Author:

Address:
Sample Agreement #9 - CONTRIBUTION TO PUBLICATION AGREEMENT

This Agreement is made between The University of Texas at ______________ ("University"), a component institution of The University of Texas System, and ______________ ("Contributor").

RECITALS

A. University plans to publish a work entitled "{name of work}" (the "Work").
B. The Work will be edited by {editor} and distributed by {distributor}.
C. Contributor has written or co-written one or more elements of the Work.

Now, therefore, the parties agree as follows:

1. The Contributor warrants and guarantees to the University that the contribution is original on his or her part, except for such material from copyrighted sources as is reproduced with the written permission of the copyright holder, and is in no way a violation of, or an infringement upon, any copyright belonging to any third party. The Contributor shall indemnify and hold the University harmless from any claims of infringement of copyright by any third party regarding the materials included in Contributor's manuscript.

2. All contributions of manuscripts or other information submitted in connection with this Agreement by the Contributor shall become the property of the University. Contributor does hereby assign and transfer to University the entire right, title and interest in and to the copyright in Contributor’s manuscript and in and to all works based upon, derived from, or incorporating the manuscript and in and to all rights corresponding to the foregoing throughout the world.

3. The University, in its sole discretion, will decide whether to register copyright for the Work in its own name and at its own expense.

4. The Contributor shall receive two (2) free copies of the Work.

5. The Contributor shall receive no royalty payments from prepublication sales of the Work. Future royalty payments will be determined by a separate Distribution Agreement between the University and its distributor.

6. This constitutes the entire agreement between the University and the Contributor and supersedes any other understandings or terms, including those expressed in any invoice of the Contributor.

If the foregoing terms are satisfactory, please sign and date this Agreement; make one copy for your files and return the original to the University at {address}.

ACCEPTED AND APPROVED:

_______________________________
University of Texas at ______________
Date___________________________

_______________________________
Contributor
Date___________________________
Sample Agreement #10 - PUBLISHING AGREEMENT

This Agreement made the day of , 19 , by and between (hereinafter called “Author,” and if there is more than one author then all of them collectively) and (and hereinafter called “Publisher”).

THE AUTHOR AND THE PUBLISHER AGREE THAT:

1. Rights Granted

The Author hereby grants, transfers and assigns to the Publisher for the full term of this agreement the exclusive right to publish and sell throughout the world in the English language the literary work presently entitled: (hereinafter called “Work”). The Author also grants and assigns to the Publisher the exclusive rights to said literary Work listed in paragraph 9(a) below, with exclusive authority to license said rights in all countries and in all languages.

2. Delivery of the Manuscript

a. The Author will deliver to the Publisher on or before , 19 , three (3) double-spaced typewritten or camera-ready copies of the complete manuscript (with all illustrations, charts, graphs, and other material mutually agreed upon for the Work) in form and content satisfactory to the Publisher, it being understood that the length of the manuscript shall be approximately .

b. If the Author fails to deliver a satisfactory manuscript on time, the Publisher will have the right to terminate this agreement and to recover from the Author any sums advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

c. If the Author and the Publisher agree that the photographs, maps, charts, or any other illustrations are necessary to the Work, the Author will provide them in final form, ready for reproduction without additional art work (maps and charts will first be furnished in draft form for editing).

3. Quoted Material

With the exception of short quotations from prose which constitute fair use, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. the Author will obtain such consents at his or her own expense after consultation with the Publisher and will file them with the Publisher at the time the manuscript is delivered. Any obligations associated with permissions, such as free copies, will be the responsibility of the Author.

4. Copy Editing and Proofreading

The Work will be copy edited by the Publisher and returned to the Author for reading and correction; the corrected manuscript will be returned to the Publisher by the Author within weeks. Queries from the Publisher will be made by attachments to the manuscript and the Author will place all changes or comments only on these attachments. This will be the Author’s last opportunity to make any substantive changes without cost. After the Work has been set in type the Author will read and correct galley and/or page proofs. The Author will prepare, or cause to be prepared, and deliver to the Publisher within weeks of the receipt of page proofs an index to the Work acceptable to the Publisher, unless it has been agreed beforehand that an index will not be needed.

5. Collective Works

If the Work is a collection of articles by several authors, the general editor ( called “the Author” in this agreement) will be responsible for distributing copy-edited articles to the contributors for
their reading and correction, and for return of the corrected articles with any additional changes or queries the Author may have, within weeks. The Author will also be responsible for reading and correcting galley and/or page proofs, and unless otherwise agreed upon, for providing the index.

6. Author’s Alterations
The Author will bear the expense of any alterations made in the proofs by the Author (exclusive of printer’s or Publisher’s staff errors) which exceed 10% of the cost of the composition.

7. Publication of the Work
The Work shall be published by the Publisher in the English language as soon as circumstances permit after receipt of the completed manuscript, at its own expense, in such style or styles and at such price or prices as the Publisher shall deem best suited to the sale of the Work.

8. Copyright
The Author authorizes the Publisher to copyright the Work in the Publisher’s name in the United States and elsewhere as the Publisher may elect.

9. Author’s Warranty
The Author warrants that he or she is the sole owner of the Work and has full power and authority to copyright it and to make this agreement; that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. The Author will, to the extent authorized under the laws and constitution of the State of Texas, defend, indemnify, and hold harmless the Publisher and/or its licensees against all claims, suits, costs, damages, and expenses that the Publisher and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Work or any infringement or violation by the Work of any copyright or property right; and until such claim or suit has been settled or withdrawn, the Publisher may withhold any sums due the Author under this agreement.

10. Royalty Payments
The Publisher shall pay to the Author on each copy of the Work sold by the Publisher, less returns, the following royalties based on the net sales of the Work (net sales being defined as sales, less returns, at list price less trade discounts):
   a. On casebound copies:
   b. On paperbound copies:
   c. On casebound and/or paperbound copies sold at special discount of 60% or more from the list price, a royalty of % of the amount the Publisher receives, except as provided in paragraph 7(h).
   d. On casebound and/or paperbound copies sold for export (outside the United States and Canada), 75% of the royalties stipulated in paragraphs 7(a) and (b), except as provided in paragraph 7(e).
   e. On copies (casebound, paperbound, or in sheets) sold for co-publications at discounts of 60% or more, 10% of the amount the Publisher receives.
   f. No royalty shall be paid on copies sold at a remainder price (any sale at or below manufacturing cost being deemed a remainder sale) or on copies furnished without charge for review, advertising, sample, promotion or other similar purposes, or on damaged copies.

11. Selections for Publicity Purposes
The Publisher may publish or permit others to publish or broadcast without charge and without royalty such selections from the Work for publicity purposes as may benefit the sale of the Work.
12. Braille
The Publisher may license publication of the Work without charge and without royalty in Braille or by any other method primarily designed for the physically handicapped.

13. Subsidiary Rights
The Publisher shall have the sole right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

14. Compensation
The net amount of any compensation received from such dispositions will be divided equally between the Author and the Publisher (after all manufacturing costs, commissions, foreign taxes, and other charges) in lieu of royalty, except that the division of the net proceeds from dramatic, motion picture, and television licenses shall be % to the Author and % to the Publisher.

15. Collective Works
If the Work is a collection of articles by several authors, the net amount of any compensation received from the sale of subsidiary rights will be shared equally between the Publisher (50%) and the contributor(s) (50%) of the material used rather than the general editor (called “the Author” in this agreement).

16. Competing Publications
The Author agrees not to publish or furnish to any other publisher, without the Publisher’s written consent, during the term of this agreement any work on the same subject and of the same content and character as the Work covered by this agreement, publication of the which would in the Publisher’s opinion clearly conflict with the sale of the Work.

17. Revisions
The Author agrees to revise the Work within one year upon the receipt of written request from the Publisher. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within one year after the Publisher has requested it, or should the Author be deceased, the Publisher may have the revision made and charge the cost against the Author’s royalties and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

18. Author’s Copies
The Publisher shall furnish the Author, free of charge, ( ) copies of the casebound edition of the Work as published, and any additional copies desired by the Author for personal use (not for resale) shall be supplied at a discount of 40% from list price, without royalty to the Author. If a paperback edition is issued, the Author will receive, free of charge, ( ) copies. Author’s discount on purchase of additional copies for personal use will be the same.

19. Collective Works
If the Work is a collection of articles, the Publisher shall furnish the Author, free of charge, ( ) copies of the casebound edition and ( ) copies of the first edition to each contributor. If a
paperback edition is issued, the Author will receive, free of charge, ( ) copies. Any additional copies desired for personal use (not for resale) by the Author shall be supplied at a discount of 40% from list price without royalty to the Author.

20. Royalty Statements and Payments
   a. The Publisher shall render to the Author in October of each year an annual statement of account as of the preceding August thirty-first. Each statement shall be accompanied by payment of all sums due thereon. If in any yearly period the total payments due are less than $25.0 the Publisher shall render the statement but may defer the payment until such time as the sum of $25.00 or more shall be due.
   b. The Author may, upon written request, examine the Publisher’s books of account insofar as they relate to the Work.

21. Termination of Agreement
   The Work shall be considered to be “in print” if it is offered for sale by the Publisher in any edition or if it is offered for sale in any edition licensed by the Publisher during the term of this agreement. In the event that the Publisher fails to keep the Work in print and the Author makes a written request of the Publisher to keep the Work in print, the Publisher shall, within sixty (60) days after receipt of said written request, notify the Author in writing of the Publisher’s decision in the matter. If the Publisher elects to keep the Work in print, it shall have six (6) months thereafter to comply. In the event that the Publisher elects not to keep the Work in print or fails to comply with the six (6) months deadline (unless the failure is due to circumstances beyond its control), then this agreement shall terminate and all rights granted to the Publisher shall revert to the Author.

22. Options/Contracts Third Parties
   Nothing contained in Paragraph 14(a) of this agreement shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of either the Author or the Publisher in the income resulting from such agreements.

23. Discontinuing Manufacture
   When the Publisher decides that the public demand for the Work no longer warrants its continued sale, the Publisher may discontinue manufacture and destroy any or all plates, films, books, and sheets without liability to the Author.

24. Amendments
   The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the Publisher concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

25. Construction, Binding Effect, and Assignment
   This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the Publisher shall include their heirs, successors, assigns, and personal representatives.
IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.
By: [Name of Publisher]
Director

________________________________________
Author

________________________________________
Address

________________________________________
Social Security Number

________________________________________
Author

________________________________________
Address

________________________________________
Social Security Number

________________________________________
Author

________________________________________
Address

________________________________________
Social Security Number
Sample Copyright Statement for Forum/Publication Contributions

Note: The following are forms of copyright notice to apply depending upon how explicit you wish to be in spelling out exactly what people should do and refrain from doing with your works.

"Presentation of this [article/material/etc.] by [Publication] was made possible by a limited license grant from the author who has retained all copyrights in the contribution. All other elements of [Publication] such as its structure and organization are also protected by copyright. [State here what uses are permitted and what uses require further [written] permission or are prohibited.]

OR

"All information contained at this site is the property of [Owner] unless otherwise noted. Duplication or further transmission of information contained at this site for reasons besides personal use requires the express prior written permission of [Owner]."

OR

"Copyright [date] [Owner]. Please feel free to utilize the information presented here for your personal use. Any commercial use requires the express prior written permission of [Owner]."

OR

"Copyright [date] [Owner]. All rights reserved. Reproduction is permitted so long as [list conditions such as no charge is made for copies, no copies are placed on any electronic online service or database for which there is a fee other than a flat access charge, there is no alteration and this copyright notice is included]."

OR

"Permission for electronic dissemination of [Documents] is granted. Reproduction in hardcopy/print format for educational purposes or by non-profit organizations such as libraries and schools is permitted. For all other uses of the [Documents], prior advance written notice is required. Send inquiries to [address or link to mailto]."

Copyright Policy

Note: This policy need not be published but should guide your actions with regard to the allocation of ownership or other interests in copyright. It is appropriate where the Publication will not take an assignment of copyright.

"It is the policy of [Publication] to timely and effectively distribute scholarly materials in the field of [subject]. While contributors retain copyright in their contributions, [Publication] acquires sufficient rights to permit it to accomplish its purpose. These rights include the right to distribute contributions online, to incorporate contributions into other media for offline distribution, to add appropriate hyperlinks or otherwise integrate contributions into the larger body of relevant literature, [other]. Consistent with this policy, [Publication] generally permits and encourages
[uses]. Other uses, such as [example] are not permitted without the [written] permission of the copyright owner, who will, in most cases be the author."

Policy for Handling Complaints

Note: This policy need not be published but should be written, maintained, and used to guide your response to any complaints.

If [Publication] receives a complaint that any contribution to the Publication infringes copyright or other intellectual property rights or contains material inaccuracies, libelous materials or otherwise unlawful materials, [Publication] will notify the author and [Publication's] legal department and begin to investigate the complaint. Investigation may include a request that the parties involved substantiate their claims. [Publication], in coordination with legal counsel, will make a good faith determination whether to remove the allegedly wrongful material. A decision not to remove material should represent [Publication]'s and its legal counsel's reasonable belief that the complaint is without sufficient foundation, or if well-founded, that a legal defense or exemption may apply, such as fair use in the case of copyright infringement or truthfulness of a statement in the case of libel. [Publication] will document its investigation and decision.

ELECTRONIC PUBLICATION AGREEMENT

This Agreement is made between [Name of Journal] ("Journal") and ________________ ("Contributor").

RECITALS

A. Journal electronically publishes and distributes materials in the field of [subject matter].

B. Contributor has submitted an article or other material to the Journal for publication ("Contribution").

Now, therefore, the parties agree as follows:

1. Contributor will submit Contribution in accordance with the Submission Procedures set forth on Exhibit A, “Information for Contributors.”

2. Contributor will retain copyright in the Contribution, subject to Journal’s license to:
   a. reproduce, distribute, publish and transmit the Contribution, through whatever medium Journal determines is best to accomplish Journal’s purposes as set forth in Exhibit A., whether the medium is now known or later developed;
   b. incorporate the Contribution into a multimedia, hypertext environment, including appropriate hyperlinks.

3. Contributor warrants to the Journal that the Contribution has not been nor is it being considered for publication elsewhere, except as agreed and set forth on Exhibit B hereto (electronic preprint distribution, for example.)

Draft of Copyrights and Patents Handbook
September 6, 2002
4. The Contributor warrants to the Journal that the Contribution is original material, except for such material from copyrighted sources as is reproduced with the written permission of the copyright holder sufficient to permit the Journal to use the Contribution as set forth herein, and is in no way a violation of, or an infringement upon, any copyright belonging to any third party; that the materials contained in the Contribution are accurate; and that the Contribution contains no defamatory or otherwise illegal materials. The Contributor shall indemnify and hold the Journal harmless from any claims that the Contribution infringes a third party’s copyright or contains inaccurate, libelous or unlawful material.

5. This Agreement, along with its attachments, constitutes the entire agreement between the Journal and the Contributor and supersedes any other understandings or terms. If the foregoing terms are satisfactory, please sign and date this Agreement; make one copy for your files and return the original to the Journal at ([name and address of contact person]). This Agreement may be submitted electronically if accompanied by a verified electronic signature.

ACCEPTED AND APPROVED:

_________________________________
Journal of _______________________

_________________________________
(Date)

_________________________________
(Contributor)

_________________________________
(Date)

Disclaimer

Note: This disclaimer should be used in those areas of your Publication where submissions are not peer-reviewed or otherwise evaluated.

"This disclaimer is not meant to sidestep the responsibility for the material we will share with you, but rather is designed to emphasize the purpose of this [Publication] feature, which is to provide information for your own purposes. The subjects presented have been chosen for their [educational value]. The information contained herein consists of [describe] and is based upon [or derived from, or obtained from] [explain]. The information should not be considered to be completely error-free or to include all relevant information; nor should it be used as an exclusive basis for [decision-making]. The user understands and accepts that if [Publication] were to accept the risk of harm to the user from use of this information, it would not be able to make the information available because the cost to cover the risk of harms to all users would be too great. Thus, use of the information is strictly voluntary and at the user's sole risk."
Index and URL's to the  
Copyrights and Patents Committee  
HANDBOOK

PAGE CONTENTS
3 Notice to All Personnel
4 Statement by Creators (see also Sample Letter #4)
   http://www.pres.uiuc.edu:80/Uigenrules.html#art3
5 Copyright General Information - Web sites
6 Notice of Copyright - from the U.S. Copyright Office
7 Need Permission to Use It? (see also Sample Letter #4)
   http://www.utsystem.edu/OGC/IntellectualProperty/copypol2.htm
8 Types of Educational Materials Agreements
10 Four Factor Fair Use Test
   http://www.utsystem.edu/OGC/IntellectualProperty/copypol2.htm
14 Fair Use
   Educational Fair Use Guidelines for Distance Learning
20 Short List Summary of Suggested Multimedia Fair Use Guidelines
   http://www.oid.ucla.edu/fnmc/fairuse.htm
21 Fair Use Rules of Thumb for:
   http://www.utsystem.edu/OGC/IntellectualProperty/copypol2.htm
22 Coursepacks
23 Distance Learning
24 Image Archives
25 Multimedia Works
26 Music
27 Research Copies
28 Reserves
29 Sample Letters
30 Instructions for Permission Letters
   http://www.cetus.org/fair7.html
31 Letter #1 - Requesting Permission
33 Letter #2 - Requesting Permission
   http://www.cetus.org/fair7.html
34 Letter #3 - Copyright License
36 Letter #4 - Requesting Non-Exclusive Copyright License
37 Letter #5 - Permission Form
38 Letter #6 - Cease and Desist Letter
39 Letter #7 - Assignment of Copyright
40 Sample Agreements
41 Sample Agreement #1 - Checklist for Software and Database Agreements
43 Sample Agreement #2 - Software License Agreement

Draft of Copyrights and Patents Handbook
September 6, 2002
http://www.utsystem.edu/OGC/IntellectualProperty/samplcont.ctm
Sample Agreement #3 - Copyright License Agreement
Sample Agreement #4 - Multimedia Development and Distribution Agreement
Sample Agreement #5 - Faculty Ownership Agreement
Sample Agreement #6 - Joint Ownership Agreement
Sample Agreement #7 - Contribution to a Collective Work
Sample Agreement #8 - Works for Hire Agreement
Sample Agreement #9 - Contribution to Print Publication Agreement
Sample Agreement #10 - Print Publishing Agreement
Contribution to Electronic Journal Agreement