COPYRIGHTED MATERIAL

Copyright protection subsists, in accordance with United States Copyright Law, 17 U.S.C. 101–1332, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sound recordings; and
8. Architectural works.

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. 102

OWNERSHIP OF COPYRIGHT

Copyright in a work protected under United States Copyright Law vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work. *17 U.S.C. 201(a)*

WORK FOR HIRE

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of United States Copyright Law, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright. *17 U.S.C. 201(b)*

A “work made for hire” is:

1. A work prepared by an employee within the scope of his or her employment; or
2. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

A "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

An "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

17 U.S.C. 101

TRANSFER OWNERSHIP

The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by 17 U.S.C. 106, may be transferred and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner.

17 U.S.C. 201(d)

REGISTERING A COPYRIGHT

At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by registering in accordance with 17 U.S.C. 408–409 and 708. Such registration is not a condition of copyright protection. *17 U.S.C. 408(a)*

EXCLUSIVE RIGHTS

Subject to 17 U.S.C. 107–122, the owner of a copyright has the exclusive rights:

1. To reproduce the copyrighted work in copies or phonorecords;
2. To prepare derivative works based upon the copyrighted work;
3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

5. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. 106

FAIR USE

An exception to the exclusive rights enjoyed by copyright owners is the doctrine of fair use. The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by 17 U.S.C. 106, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. The following factors shall be considered in determining fair use:

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes.

2. The nature of the copyrighted work.

3. The amount and importance of the portion used in relation to the copyrighted work as a whole.

4. The effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. 107

PERFORMANCES AND DISPLAYS

Additional exceptions related to performances and displays include performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under United States Copyright Law, and that the person responsible for the performance knew or had reason to believe was not lawfully made.
17 U.S.C. 110(1)

FACE-TO-FACE TEACHING ACTIVITIES

DISTANCE EDUCATION

Except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason

to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, is not a copyright infringement if:

1. The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;
2. The performance or display is directly related and of material assistance to the teaching content of the transmission;
3. The transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to students officially enrolled in the course for which the transmission is made or officers or employees of governmental bodies as a part of their official duties or employment; and
4. The transmitting body or institution:
    a. institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and
    b. in the case of digital transmissions:
        (1) applies technological measures that reasonably prevent retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and unauthorized further dissemination of the work in accessible form by such recipients to others; and
        (2) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination.

17 U.S.C. 110(2)

“Mediated instructional activities” with respect to the performance or display of a work by digital transmission under 17 U.S.C. section 110 refers to activities that use such work as an integral part of the

class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in one or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use. *17 U.S.C. 110*

GUIDELINES

The purpose of the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" and "Guidelines for Educational Uses of Music" is to state the minimum and not the maximum standards of educational fair use under 17 U.S.C 107. The guidelines are not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107. There may be instances in which copying that does not fall within the guidelines may nonetheless be permitted under the criteria of fair use.

PROHIBITIONS

Notwithstanding the fair use guidelines, the following shall be prohibited:

1. Copying of print materials and sheet music to create or replace or substitute for anthologies, compilations, or collective works. This prohibition against replacement or substitution applies whether copies of various works or excerpts are accumulated, or reproduced and used separately.
2. Copying of or from works intended to be "consumable" in the course of study or teaching. These works include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.

Copying shall not substitute for the purchase of books, publishers' reprints, or periodicals; be directed by higher authority; or be repeated with respect to the same item by the same teacher from term to term.

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

Additional prohibitions regarding the use of music are:

1. Copying for the purpose of performance, except as permitted under the "Guidelines for Educational Use of Music."

2. Copying for the purpose of substituting for the purchase of music, except as permitted under the “Guidelines for Educational Use of Music.”

3. Copying without inclusion of the copyright notice that appears on the printed copy.

REFERENCE

“Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” and “Guidelines for Educational Use of Music” are contained in the historical note following 17 U.S.C. 107.

BROADCAST PROGRAMS

Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by the college district for a period not to exceed the first 45 consecutive calendar days after date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed.

2. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary during the first ten consecutive school days within the 45-calendar-day retention period. “School days” are actual days of instruction, excluding examination periods.

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

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording. All copies of off-air recordings shall include the copyright notice on the broadcast program as recorded.

5. After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar-day retention period only to determine whether or not to include the broadcast program in the teaching curriculum and shall not be used in the college district for student exhibition or any other nonevaluative purpose without authorization.

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

17 U.S.C. 107 historical note

COPYRIGHT INFRINGEMENT

Anyone who violates any of the exclusive rights of the copyright owner or of the author as provided in 17 U.S.C. 106A(a) is an infringer of the copyright or right of the author. The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of 17 U.S.C. 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. *17 U.S.C. 501(a)–(b)*

ONLINE COPYRIGHT INFRINGEMENT

LIMITATION OF LIABILITY

A "service provider" (regarding online services) under 17 U.S.C. 512(k) that meets the conditions in 17 U.S.C. 512 shall not be liable for monetary relief or certain injunctive or other equitable relief, except as allowed under 17 U.S.C. 512(j), for copyright infringement in certain online services (transitory communications, system caching, storage of information on systems or networks at the instruction of users, and information location tools) provided by the service provider. *17 U.S.C. 512*

ELIGIBILITY FOR LIMITATIONS ON LIABILITY

The limitations on liability established by 17 U.S.C. 512 shall apply to a service provider only if the service provider:

1. Has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

2. Accommodates and does not interfere with standard technical measures. The term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and:

    a. Have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

    b. Are available to any person on reasonable and nondiscriminatory terms; and

    c. Do not impose substantial costs on service providers or substantial burdens on their systems or networks.

17 U.S.C. 512(i)

LIMITED LIABILITY

Generally, a service provider shall not be liable for monetary relief, or for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resided on a system or network controlled or operated by or for the service provider, if the service provider:

INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS

1. Does not have actual knowledge that the material or activity using the material on the system or network is infringing; in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

2. Does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity;

3. Upon notification of claimed infringement as described in 17 U.S.C. 512(c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity; and

4. Has designated an agent to receive notifications of claimed infringement described in 17 U.S.C. 512(c)(3), by making available through its service, including on its Web site in a location accessible to the public, and by providing to the Copyright Office, certain contact information.

17 U.S.C. 512(c)(1)–(2); 37 C.F.R. 201.38

FACULTY PERFORMING TEACHING OR RESEARCH FUNCTIONS

When a public or other nonprofit institution of higher education, including a college district, is a service provider, and when a faculty member is performing a teaching or research function, for the purposes of 17 U.S.C. 512(a) and 512(b) such faculty member shall be considered to be a person other than the institution, and for the purposes of 17 U.S.C. 512(c) and 512(d) such faculty member's knowledge or awareness of his or her infringing activities shall not be attributed to the institution if:

1. Such faculty member's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding three-year period, for a course taught at the institution by such faculty member;

2. The institution has not, within the preceding three-year period, received more than two notifications described in 17 U.S.C. 512(c)(3) of claimed infringement by such faculty member, and such notifications of claimed infringement were not actionable under 17 U.S.C. 512(f); and

3. The institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

17 U.S.C. 512(e)

OTHER ONLINE SERVICES

Generally, liability of a service provider for copyright infringement may also be limited upon certain conditions for transitory communications, system caching, and information location tools services. *17 U.S.C. 512(a)–(b), (d)*

DISABLING OR REMOVING ACCESS

Generally, a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing. *17 U.S.C. 512(g)*

Note: Further information regarding copyrights and the Digital Millennium Copyright Act can be found at: http://www.copyright.gov.

TRADEMARKED MATERIAL UNDER FEDERAL LAW

"TRADEMARK"

The term "trademark" includes any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register on the principal register to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

"SERVICE MARK"

The term "service mark" means any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register on the principal register to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

"CERTIFICATION MARK"

The term "certification mark" means any word, name, symbol, or device, or any combination thereof, used by a person other than its owner or which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other

characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

"COLLECTIVE MARK" — The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization or which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register and includes marks indicating membership in a union, an association, or other organization.

15 U.S.C. 1127

REGISTERING A MARK — Trademarks, service marks, collective marks, and certification marks may be registered in accordance with the Trademark Act of 1946, 15 U.S.C. 1051–1142. *15 U.S.C. 1051–1054*

ASSIGNMENT OF A MARK — A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark in accordance with 15 U.S.C. 1060. *15 U.S.C. 1060(a)(1)*

LIABILITY — Any person shall be liable in a civil action by the registrant for the remedies provided in 15 U.S.C. 1114 if the person, without the consent of the registrant:

1. Uses in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
2. Reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

Under item 2 above, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

15 U.S.C. 1114(1)

Note: Further information regarding federal trademarks can be found at http://www.uspto.gov/trademarks.

TRADEMARKED MATERIAL UNDER STATE LAW

The term "service mark" means a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the services of one person, including a unique service, from the services of another; and indicate the source of the services, regardless of whether the source is unknown; and includes the titles, character names used by a person, and other distinctive features of radio or television programs, regardless of whether the titles, character names, or programs advertise the sponsor's goods. *Business and Commerce Code 16.001(8)*

The term "trademark" means a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the person's goods, including a unique product, from the goods manufactured or sold by another; and indicate the source of the goods, regardless of whether the source is unknown. *Business and Commerce Code 16.001(10)*

REGISTRATION

A service mark or trademark may be registered in accordance with Business and Commerce Code Chapter 16 and 1 Administrative Code Chapter 93. *Business and Commerce Code 16.051-.066; 1 TAC 93.31-.124, .141-.144*

ASSIGNMENT OF A MARK AND REGISTRATION

A mark and its registration are assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of, and symbolized by, the mark. An assignment must be made by a properly executed written instrument and may be recorded with the Texas Secretary of State in accordance with Business and Commerce Code 16.061. *Business and Commerce Code 16.061; 1 TAC 93.131*

INFRINGEMENT

Subject to Business and Commerce Code 16.107, a person commits an infringement if the person:

1. Without the registrant's consent, uses anywhere in this state a reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with selling, offering for sale, or advertising goods or services when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services; or
2. Reproduces, counterfeits, copies, or colorably imitates a registered mark and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package, wrapper, receptacle, or advertisement intended to be used in selling or distributing, or in connection with the sale or distribution of, goods or services in this state.

A registrant may sue for damages and to enjoin an infringement.

Business and Commerce Code 16.102(a)–(b)

Note: Further information regarding state trademarks can be found at http://www.sos.state.tx.us/corp/tradepatents.shtml.

PATENTS

"INVENTION" The term "invention" means invention or discovery. *35 U.S.C. 100(a)*

"'PROCESS"' The term "process" means process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material. *35 U.S.C. 100(b)*

OBTAINING A PATENT Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement, may obtain a patent, subject to the conditions and requirements of 35 U.S.C. 1-376. *35 U.S.C. 101*

ASSIGNMENT OF PATENT Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigned or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States. *35 U.S.C. 261*

INFRINGEMENT OF PATENTS Except as otherwise provided in 35 U.S.C. 1-376, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent, infringes the patent.

Whoever actively induces infringement of a patent shall be liable as an infringer.

Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

35 U.S.C. 271(a)–(c)

Note: Further information regarding patents can be found at http://www.uspto.gov/patents.
