



**NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
BUREAU OF TRAINING COPYRIGHT POLICY**

**Revised December 2013**

## **PURPOSE OF THIS DOCUMENT**

*This document provides a general explanation of Copyright Law and describes how it impacts the New York State Office of Children and Family Services (OCFS) Bureau of Training operations. The document establishes policy and provides instruction in application of that policy. The audience includes but is not limited to OCFS staff and vendors working with the OCFS Bureau of Training.*

## **PURPOSE OF THE COPYRIGHT LAW**

The Copyright Law is found in 17 United States Code (USC) Sections 101 et seq. The primary purpose of the Copyright Law is to encourage the creation and production of original works of authorship, including literary, dramatic, musical, artistic, and other intellectual works. The law provides authors of such works or the owner of copyright with exclusive rights to reproduce and distribute their work.

## **THE OWNER OF THE COPYRIGHT**

The Copyright Law provides that the copyright in a work becomes the property of the author who created the work. The author, as the owner of the copyright, can enter into training agreement/contracts or agreements that transfer or assign to others some or all of her/his rights as copyright holder.

However, if a work is a “work made for hire,” then the Copyright Law provides that the employer or other person for whom the work was prepared owns the copyright.

- < A work created by an employee within the scope of his or her employment is a “work made for hire.” For example, copyright ownership vests with the Office of Children and Family Services (OCFS) when an OCFS staff member authors a training manual as part of that staff member’s job duties.
  
- < If a work is created by an independent vendor, and fits within one of the nine categories of works set forth in the law, and there is a written agreement between the parties specifying that the work is a “work made for hire,” then the person for whom the work was prepared owns the copyright. For example, when OCFS training contracts or otherwise establishes an agreement with an independent vendor to write/create a curriculum, OCFS would own the copyright, as this would be a “work made for hire.”

## **RIGHTS OF THE OWNER OF COPYRIGHT**

Section 106 of the Copyright Law grants the ***owner of the copyright the exclusive right to do and to authorize others to do*** the following:

- Reproduce the copyrighted work;
- Prepare derivative works based upon the copyrighted work;
- Distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental lease, or lending (this includes distribution of free copies to students);
- Perform the copyrighted work publicly with respect to literary, musical, dramatic, and choreographic works, pantomimes, motion pictures, and other audiovisual works;
- Display the copyrighted work publicly 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.

**IT IS ILLEGAL FOR ANYONE TO VIOLATE ANY OF THE RIGHTS PROVIDED BY THE COPYRIGHT LAW TO THE OWNER OF COPYRIGHT.**

Where OCFS is the copyright owner, OCFS holds all of the above rights.

These exclusive rights of the copyright holder are, however, subject to important exceptions. Certain public and private uses of copyrighted works are allowed under the law without the copyright holder's permission if they can be determined to be **Fair Use**. Fair use is discussed more fully in the following pages.

***Mere ownership of a book, manuscript, painting, or any other copy does not include ownership of the copyright. This is the case even when one acquires the original work. For example, if a person were to acquire the original manuscript of John Grisham's "The Firm," the owner of the copyright would still be John Grisham, or the person(s) he has assigned the copyright to. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.***

## **WORKS PROTECTED BY COPYRIGHT**

In order for a work to receive copyright protection, it must be an **original** work of authorship representing an appreciable amount of creativity and must be fixed in a tangible medium of expression. The primary categories of works in the Copyright Law are literary works, musical works, dramatic works, pantomimes, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works and sound recordings.

These categories are viewed broadly. For example, textbooks, computer programs and most compilations may be registered as literary works; maps and architectural plans may be registered as a pictorial, graphic, or sculptural work.

Copyright protects the words or pictures or graphics chosen by the author to describe, explain or illustrate an idea or system. However, it gives the copyright owner no exclusive rights in the idea, method, or system described or depicted.

*For example, an author wrote a book setting forth his theory of what happened to Jimmy Hoffa. The copyright in the book prevents others from reproducing, copying or distributing the text and illustrations used by the author to describe his theory. It does not give the author any copyright to the theory set forth in the book. Other persons may write their own books or plays using the theory. However, they may not use the author's words.*

### **WHEN COPYRIGHT PROTECTION BEGINS**

Normally, the act of publishing a document and securing copyright protection occur at the same time. For example, a copyright notice is fixed on a work when it is printed. Under the law in effect after 1978, copyright protection is secured the moment a work is fixed in tangible form. Thus a work still enjoys copyright protection even if there is no copyright symbol or other copyright notice. Furthermore, a work fixed in tangible form, but not published, is protected by copyright.

Publication though is important for many reasons including:

- Published works are subject to mandatory deposit requirements (with the Federal Copyright Office);
- Publication affects the limitations on the exclusive rights of a copyright owner;
- Publication year determines the duration of copyright for anonymous and works made for hire; and
- Publication with notice puts the public on notice that the work is protected by copyright.

Publication is defined as:

*The distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease or lending. The offering to distribute copies to a group or person for purposes of further distribution, public performance or public display constitutes publication. A public performance or display of a work does not constitute publication.*

When we copy a curriculum or manual and distribute it to state employees and/or other trainees in a training session we are publishing the document. If the work that OCFS has published contains the copyrighted material of others, without the appropriate permissions, OCFS has **violated the Copyright Law**.

### **WORKS NOT PROTECTED BY COPYRIGHT**

1. Works that were never copyrighted.

Works published prior to January 1, 1978 without copyright notice are not protected and may be reproduced without restriction. However, works published after January 1, 1978 without notice of copyright are protected by the Copyright Law.

2. Published works whose copyrights have expired.

Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre-1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later are covered by a valid copyright.

3. United States Government publications.

United States Government publications may be copied freely. They are deemed to be in the public domain and are not copyrightable. This category consists of documents prepared by an officer or employee of the U.S. Government as part of that person's official duties. It does not extend to documents published by others with the support of Government grants and training agreements/contracts. These works may or may not be protected by copyright depending on the specifics of the training agreement/contract under which they were created. *Note: Publications of the State of New York and other states are copyrightable.*

4. Ideas, methods and systems.

Copyright protection is not available for ideas or procedures for doing, making or building things, scientific or technical methods or discoveries, business operations or procedures, mathematical principles, formulas, algorithms, or any other concept, process, or method of operation.

Section 102 of the Copyright Law, clearly expresses this principle: "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."

5. Names, titles and short phrases.

Even if a name, title or short phrase is novel, distinctive, or lends itself to a play on words, it cannot be protected by copyright. There is no copyright protection to combinations of words such as: names of products or services, names of businesses, pseudonyms, titles of works, catchwords, mottoes, slogans, and mere listings of ingredients. Some of these may be protected by trademark.

6. Works that have not been fixed in a tangible form of expression.

Works must be fixed in a tangible form of expression in order to be protected. Choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded are not subject to copyright protection.

7. Works consisting entirely of information that is common property and containing no original authorship.

Standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources are not subject to copyright protection.

### **COPYRIGHT NOTICE**

Works published prior to January 1, 1978 were required to contain a copyright notice in order to be protected by copyright law. However, works published after January 1, 1978 do not have to contain copyright notice in order to be protected by the copyright law.

Proper copyright notice has three parts:

- 1) A symbol “©,” the word "Copyright," or the abbreviation "Copr.";
- 2) The year a work is first published; and
- 3) The name of the copyright owner.

Sometimes the statements such as "All Rights Reserved" or "No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical [etc., etc.]" are printed underneath a copyright notice. These statements do not override any rights to **Fair Use** provided by the Copyright Law.

## **DURATION OF COPYRIGHT**

### 1. Works Originally Created on or After January 1, 1978.

After January 1, 1978, a work is automatically protected from the moment it is fixed in tangible form for a term of the author's life, plus an additional 70 years after the author's death. For a joint work prepared by two or more authors who did not work for hire, the term lasts for 70 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

### 2. Works originally created before January 1, 1978, but published or registered after that date.

These works have been automatically brought under the statute and are now given copyright protection. The duration of copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978.

### 3. Works Originally Created and Published or Registered Before January 1, 1978.

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a term of 28 years from the date it was secured. The law amended as of 1978 provides that copyrights in existence prior to January 1, 1978 may be renewed.

Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre 1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later are covered by a valid copyright.

Determining the copyright status of some post-1922 but pre-1978 works may not be easy. For difficult issues, we may have to seek the assistance of the U.S. Copyright Office, who will investigate the copyright status of a work on an hourly fee basis.

## **FAIR USE DOCTRINE**

The Fair Use provisions of the Copyright Law are set forth in Section 107 and contain exceptions to the copyright owner's exclusive rights to reproduction and distribution. Fair Use permits limited copying without the copyright owner's permission for purposes such as criticism, comment, scholarship, research, or teaching.

The law does not establish specific limits of what constitutes Fair Use of a copyrighted work. However, it does provide that in determining whether a particular use would be deemed a Fair Use of a copyrighted work, the four factors set forth in Section 107 must be considered:

1. **The purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. **The nature** of the copyrighted work;
3. **The amount and substantiality** of the portion used in relation to the work as a whole; and
4. **The effect of the use** upon the potential market for or value of the copyrighted work.

Because of the Fair Use provision of the law, what would otherwise be considered copyright infringement is permitted. Authors may quote from or reproduce small amounts of material for purposes of criticism, comment or to illustrate or support their own ideas. For example, two or three paragraphs of a book or periodical article, a stanza of a poem, a single chart or graph may be copied. Use of a more extensive quotation must be analyzed on a case-by-case basis under the four factors of Fair Use and where necessary, express permission of the copyright owner must be obtained. Whether or not permission is needed, any sources used should always be credited using the proper citation format. *Kate L. Turabian, A Manual for writers of Term Papers, Theses, and Dissertations, Sixth Ed.* (Chicago: The University of Chicago Press, 1996) is a source for proper citation format.

### **EVALUATING FAIR USE UNDER THE FOUR STATUTORY FACTORS**

#### **1. Purpose and character of the use.**

A nonprofit educational purpose makes it more likely, but does not ensure, that the use would be considered fair. A copy made to avoid purchasing the original and used in place of the original would not be considered Fair Use. A quote for purposes of comment or criticism is more acceptable than quoting to support one's position.

#### **2. Nature of the copyrighted work.**

A use would be more likely to be considered fair when the copyrighted work was a compilation of facts or information, rather than a creative or imaginative work. Copying of books out-of-print or materials unavailable for purchase, newspaper or journal (not newsletter) articles of current interest, or material designed for distribution to the general public are more likely to be considered Fair Use. In the context of classroom use (which would include OCFS supported training programs), copying from textbooks and

other materials prepared primarily for the educational market (particularly consumable workbooks) is not considered Fair Use.

**3. Amount and substantiality of the material used in relation to the copyrighted work as a whole.**

In evaluating this factor both the amount of the work being copied and the significance or importance of the portion being copied must be examined. As a general rule, quotes should be limited to one or two consecutive paragraphs or stanzas. The material quoted should be but a small portion of the copyrighted work and should not contain the essence or principal element of the copyrighted work. Substantial paraphrasing is considered mere copying and Fair Use analysis must be used to determine if permission is required.

**4. Effect of the use on the potential market for or value of the copyrighted work.**

A use is not considered fair where it would diminish or lower the value of the copyrighted work.

**Clearly, the determination as to what is and what is not Fair Use requires a review of the facts on a case-by-case basis. Any questions on whether a particular use would be considered a Fair Use under the Copyright Act should be directed to Kelly Phillips in OCFS's Counsel's Office.**

**COPYING OF COPYRIGHTED MATERIALS FOR EDUCATIONAL PURPOSES**

Copying for educational purposes can be an infringement of the rights of the copyright holder. The creators of the Copyright Act of 1976 recognized a need for guidance about what constituted permissible amounts of photocopying of copyrighted materials for educational purposes. To offer some guidance, "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (hereafter Classroom Guidelines) was written by representatives of various educational organizations and was included as part of the legislative history of the Act. The Classroom Guidelines provide standards for both single copying by teachers and multiple copying for classroom use. The guidelines, which set forth the minimum, not maximum, of educational Fair Use, are summarized below.

*For simplicity, where the materials being copied are for educational purposes and consist of a single copy or multiple copies for classroom use, consider the copying "as is." Refer to section "Steps in Copyright Analysis" for further clarification.*

**A. Single Copying by Teachers or Instructors**

At the very least, a teacher may make a single copy of any of the following for scholarly research or in preparing to teach a class:

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

All single use copying of copyrighted works must comply with the four factors of Fair Use as set forth previously. Under the following conditions, photocopying would most likely be considered Fair Use:

- Where staff were unable to locate another copy of the work because it was not available from the library or other source and cannot be obtained within required time constraints;
- Where the material will be copied only once and will not be distributed to others; and
- Where the amount of material photocopied is a small proportion of the entire work.

As a general rule, most single copy photocopying for individual use in research may be considered Fair Use.

## **B. Copying for Classroom Use**

The Classroom Guidelines permit distribution by a teacher of multiple copies of materials to students in a class without obtaining prior permission to do so from the copyright owner, under the following four conditions, all of which must be met.

1. The distribution of the same photocopied material does not occur every semester, is for only one course, with only one copy provided to each student, which copy becomes the student's property, and no charge is made for the copy beyond the actual cost of reproduction.
2. The amount of material distributed does not exceed certain brevity standards:
  - a. For prose: A work may be copied in its entirety if it is less than 2,500 words in length. If the work is longer, the excerpts copied should not exceed 1,000 words, or 10% of the work, whichever is less.

- b. For poetry: 250 words is the suggested limit.
  - c. For illustrations: One is the rule of thumb.
3. The copying is at the instance and inspiration of the individual teachers such that the decision to use the material did not allow adequate time to request permission prior to use.
4. The appropriate copyright notice appears on the first page of the photocopied material.

The best rule of thumb that can be garnered from these guidelines is that photocopying should not be done as a substitute for purchasing the material, particularly for multiple copy classroom use. Photocopying practices must not have a significant detrimental impact on the market for the original copyrighted work. As with single use copying, all multiple use copying of copyrighted works must comply with the four factors of Fair Use set forth previously.

#### **PHOTOCOPYING AND DUPLICATION REQUIRING PERMISSION**

Following are some guidelines to help in determining when photocopying and duplication require permission. Again, all such copying must be analyzed under the four factors of Fair Use.

1. **Repetitive Copying:** The classroom or reserve use of photocopied materials in multiple courses for successive years would require advance permission from the copyright owner.
2. **Copying for Profit:** Permission is required where the students are charged more than the actual cost of photocopying the material.
3. **Consumable Works:** The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner.
4. **Creation of Anthologies as Basic Text Material for a Course:** Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts used together as the basic text for a course will in most instances require the permission of the copyright holders. Such photocopying is considered a substitute for purchase of a book and not a Fair Use.

#### **USE OF AUDIOVISUAL MATERIALS**

The rules governing the use of excerpts of audiovisual work are the same as those governing any other copyrighted performance. Audiovisual works, for the purpose of these guidelines, include audiotapes, videotapes, CDs, DVDs, and computer recorded and stored media such as

mp3 files and YouTube© videos. Therefore, employees must analyze whether a particular use is a Fair Use under the four statutory factors mentioned above.

As a general rule, employees should only use a brief excerpt of an audiovisual work and the excerpt should not constitute more than a small portion of the work from which they were extracted. If the excerpt used supplants what otherwise would have been the sale of an audiovisual work, a copyright infringement may occur.

The following represents guidelines that, if followed, tend to make the use of an excerpt from an audiovisual work "fair use" for a nonprofit educational purpose. They are derived from a variety of sources including Section 110 of the United States Copyright Law, the Guidelines for Off-Air Taping for Educational Purposes (Kastenmeier Guidelines), and various policies of educational institutions.

#### **A. Audiovisual Works in the Classroom**

The limited use of an audiovisual work for a nonprofit educational purpose is generally permissible, provided the following conditions are met:

1. The work must be shown as part of the instructional program.
2. The work must be shown by a program participant or instructor to only program participants and the instructor.
3. The work must be shown either in a classroom or other location devoted to instruction.
4. The work must be shown either in a face-to-face setting or where participants and instructors are in the same building or general area.
5. The work must be shown using a legally reproduced copy with the copyright notice included.

Even the limited use of an audiovisual work is prohibited when:

1. The work is used for any purpose unrelated to a teaching activity.
2. The work is shown in a public performance, to an audience not confined to program participants, and is not related to nonprofit educational instruction.
3. The use involves an illegally acquired or illegally duplicated copy of the work.
4. The work is transmitted by radio or television (either closed or open circuit) from an outside location.

## **B. Broadcast Programming**

The following apply to "off-air recording" of a broadcast program (including cable television programs) for a nonprofit educational purpose:

1. An "off-air recording" may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. The "off-air recording" may be used by an individual instructor in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms, during the first 10 consecutive work days in the 45-calendar day retention period. "Work days" are defined as days when OCFS is open for business within the 45-calendar day retention period.
3. The "off-air recording" may be viewed after the 10-day consecutive period for teacher evaluation purposes, such as to determine whether or not to include the "off-air recording" in a future teaching curriculum.
4. All copies of the "off-air recording" must include the copyright notice on the broadcast program as recorded.
5. The "off-air recording" may not be physically or electronically altered or combined with others to form anthologies. However, the "off-air recording" need not be used or shown in its entirety.
6. If several different instructors want to use the same "off-air recording," duplication is permitted but all copies are subject to restrictions of the original recording.
7. These guidelines are for commercial television broadcasts and some public television broadcasts, unless there are other negotiated rights or licensing agreements.

## **C. Public Broadcasting Service/Programs**

Many of the programs and series distributed by the Public Broadcasting Service (PBS) include a 7-day re-record right. The 7-day re-record rights allow:

1. Only a single copy of the program may be recorded for a nonprofit educational purpose and it may not be duplicated.
2. A program may be recorded and shown each time a program is broadcast.

3. The program may be retained for 7 consecutive days following the broadcast but must be erased at the end of the 7th day.
4. The program may be shown as often as needed during the 7-day period.

#### **D. Audiovisual Work - Distribution and Duplication**

Rights to make multiple copies of an audiovisual work and distribute that work beyond the OCFS can vary depending on the work. Employees should not assume that they have the right to duplicate and distribute a work simply because they have purchased a copy. For example, distribution and duplication rights may have to be purchased from the producer or the distributor. Additionally, there may be no rights available from any source at any cost.

#### **E. Digital Distance Education**

Digital distance education, such as webinars or video conferencing, is an emerging educational technique being used in lieu of traditional classroom learning. The Technology, Education, and Copyright Harmonization Act of 2002 ("TEACH Act") clarifies what uses of copyrighted material are permissible with regard to distance education when permission of the copyright holder has not been sought. Furthermore, the TEACH Act outlines the specific requirements that the information technology staff and students must abide by in order to be in compliance with the current copyright laws. The Act permits teachers and students of an accredited, nonprofit education institution or government body to transmit performances and displays of copyrighted material as part of a course if certain conditions have been met. If these conditions are not or cannot be met, use of the material will have to qualify as a Fair Use or have the permission of the copyright holder to be lawful.

Questions regarding the use of copyrighted materials in a digital distance educational environment must be directed to the OCFS Director of Training prior to the distribution and use of those materials.

### **AGENCY COPYRIGHT POLICY**

#### **1. Photocopying of Copyrighted Educational Materials at OCFS.**

The summary of the Classroom Guidelines set forth above may be used in determining the minimum standards of educational Fair Use for making single and multiple photocopies of works protected by copyright.

All staff are required to comply with the educational Fair Use guidelines for copying. Staff must write for permission from the holder of the copyright for all photocopying requests which may exceed educational Fair Use limits.

## **2. Copyright of Published Materials and Works.**

All materials and works published shall contain a notice of copyright. Refer to page 3 for the meaning of the word “published.” For materials and works published by OCFS, the following copyright notice format shall be used:

*Copyright © [insert year] by The New York State Office of Children and Family Services.*

## **3. Copyright Registration.**

Copyright registration is a legal formality by which a public record is made of a particular copyright and additional rights accrue to the copyright owner including the right to sue others for copyright infringement. Registration is accomplished by mailing to the Register of Copyrights a completed application form for each work to be registered, paying a \$20 fee for each application and submitting two complete copies of the work to be registered.

The decision to register materials and works will be determined on a case-by-case basis by an OCFS spokesperson in consultation with the program manager and Counsel’s office. The factors that will be considered when making the decisions to register include, but are not limited to, the following:

- The length of time the material or work will be used.
- The number of uses for the material or work.
- The time, effort and money expended for the creation of the material or work.
- The number of copies to be distributed.
- The scope of the distribution of copies of the material or work.
- Whether others will be given permission to copy the material or work.
- The uniqueness of the subject matter of the material or work.

### **STEPS IN COPYRIGHT ANALYSIS**

Following is an outline of the process to follow in analyzing whether or not permission must be obtained.

1. Is this Incorporation or Copying “as is”?
2. Incorporation - Where the material is being incorporated into a publication of OCFS.
  - a. Is the material being incorporated from a copyrighted work?

- b. If the material being incorporated is copyrighted, then the Fair Use doctrine applies and the use must be analyzed. Consult with OCFS's Counsel's Office as needed.
  - c. If the use is Fair then no permission is required, but proper citation format must be used.
  - d. If the use exceeds the Fair Use guidelines, then permission must be requested. Permissions must be granted in writing.
2. Copying "as is" - Where the material is being copied for educational purposes and a single copy or multiple copies for classroom use are being made.
- a. Is the material being copied from a copyrighted work?
  - b. If the material is from a copyrighted work, then the summary of classroom guidelines set forth on pages 7 through 9 should be consulted and the use must be analyzed. Consult with OCFS's Counsel's Office as needed.
  - c. If the use is Fair, then no permission is required, but copyright notice must appear on the first page of all copies.
  - d. If the use exceeds what is permitted for educational copying, then permission must be obtained. Permissions must be granted in writing.

### **WRITING FOR PERMISSION**

When a use of copyrighted material requires permission, OCFS's Counsel's Office will secure the appropriate permission if the product is being developed in-house (not by a vendor). Program managers and staff who need permission to use materials should contact the OCFS's Counsel's Office and provide the following informational materials:

1. A copy of the original copyrighted material in its entirety. This material should provide the Counsel's Office with the copyright holder's information. If it does not, the copyright holder's name and address should be provided to the Counsel's Office.
2. A draft copy of how the original copyrighted material will be incorporated into the OCFS curriculum or materials the training staff in OCFS or with a training vendor is producing, if applicable.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. Therefore, allow substantial lead time for the Counsel's Office to obtain the permission before the materials are needed in final form.

## **REQUIREMENTS FOR VENDORS**

When entering into a training agreement or contracting with vendors for curriculum development and/or delivery the following language will be included in all request for proposals, contracts, training agreements, subcontracts, purchase order agreements or other relevant third party agreements, and compliance will be required of our vendors:

- **Ownership of Materials:** All materials developed with funding provided by the State and all proposals, work plans and budgets become the property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to OCFS and to the State of New York. OCFS may use any of the materials developed with project funds for any OCFS or other State purpose.
- **Copyright:** All documents created or prepared under this training agreement/contract must be in compliance with OCFS Copyright Policy. As indicated by this Copyright Policy, OCFS adheres to and requires the successful bidder to adhere to the requirements of the Copyright Law, which is Federal law and contained in Title 17 of the United States Code, Sections 101 et seq. Such requirements include, but are not limited to, the following:
  - When OCFS enters into a training agreement/contract for the creation of training or instructional work and/or materials or curriculum, it is deemed under the Copyright Law as a Work-Made-for-Hire Agreement and OCFS is the owner of the copyright thereto.
  - The vendor must contact OCFS to incorporate or include previously copyrighted materials in the work being created or prepared under the training agreement/contract. The vendor shall submit a copy of the previously copyrighted material, a draft of how the vendor proposes to include or incorporate the previously copyrighted material in the Work-Made-for-Hire. The vendor, shall obtain written permission, where such written permission is necessary and required, from the copyright owner(s) or their legal representative(s) for such inclusion or incorporation of such previously copyrighted material.
  - After the vendor obtains written permission on behalf of OCFS, the vendor will transmit a copy of the written permission to OCFS and, the vendor shall include, on the appropriate page(s) of the Work-Made-For-Hire, a citation to the copyright owner(s), using the style as set forth in the written permission.
  - Where a copyright owner requests a fee for permission, OCFS may authorize the vendor to pay the copyright owner(s) or legal representative(s) the agreed upon fee, if any, for the inclusion or incorporation of previously copyrighted material in the work-made-for-hire. OCFS, in its sole discretion, may determine that it will

not authorize the vendor to pay such fee for the right to include or incorporate such previously copyrighted material. In such event, the vendor will be required to create new materials or use alternate previously copyrighted materials (which shall also be subject to OCFS's Copyright Policy).

- Bibliographic and footnote references and citations must be included where appropriate and must use the proper format as set forth in the Copyright Policy.
- The agreement/contract will contain a warranty by which the vendor shall warrant to OCFS that he/she is the sole author of the material or work created or produced, except for the incorporated material for which copyright permission was obtained.
- The training agreement/contract will contain an indemnification in which the vendor agrees to indemnify OCFS against any legal action with respect to the warranty.

Where the vendor is using materials previously developed by that vendor and adapting or revising such materials for delivery to training populations approved by OCFS, the vendor materials must comply with the requirements of OCFS Bureau of Training Copyright Policy.

### **TEXT FOR VENDOR WORK PRODUCTS**

- The vendor must insert the text shown in the box below into all curricula, materials, publications, pamphlets, brochures, posters, and media products produced under a contract/work plan with OCFS:

#### **Acknowledgement**

This material was developed by [insert name of training vendor here] under a training and administrative services agreement with the New York State Office of Children and Family Services.

#### **Disclaimer**

While every effort has been made to provide accurate and complete information, the Office of Children and Family Services and the State of New York assume no responsibility for any errors or omissions in the information provided herein and make no representations or warranties about the suitability of the information contained here for any purpose. All information and documents are provided "as is," without a warranty of any kind.

- When the work product is copyrightable to OCFS in accordance with this OCFS Copyright Policy:

The vendor must insert the text shown in the box below into any such curricula, materials, publications, pamphlets, brochures, posters, and media products produced under a contract/work plan.

**Copyright**

Copyright © [year] by the New York State Office of Children and Family Services.

- When OCFS holds or will hold the copyright for material, and the vendor seeks permission to use that material in situations not covered within the contract/work plan:

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## **REFERENCES**

Grossman, John, Editor. *The Chicago Manual of Style, 14th Edition*. Chicago: The University Chicago Press, 1993.

Guidelines for Classroom Copying in Not-for-Profit Educational Institutions. H.R. Judiciary Comm. Rep. No. 94-1476, 94th Congress, 2d Session, pp. 68-71.

State University of New York at Albany. *Copyright Policies*. Albany: SUNY Albany, 1987.

Title 17 United States Code Sections 101 et seq.

Turabian, Kate L. *A Manual for Writers of Term Papers, Theses, and Dissertations, 6th Edition*. Chicago: The University of Chicago Press, 1996.

United States Copyright Office, Circular 1, *Copyright Basics*.

United States Copyright Office, Circular 9, *Works-Made-For-Hire Under the 1976 Copyright Act*.

United States Copyright Office, Circular 31, *Ideas Methods, or Systems*.

United States Copyright Office, Circular 34, *Copyright Protection Not Available for Names, Titles, or Short Phrases*.