

<b>STATE OF ALASKA DEPARTMENT OF FISH AND GAME STANDARD OPERATING PROCEDURE</b>		<b>NO</b> <b>III-401</b>	<b>PAGE</b> <b>401-1</b>
		<b>ISSUED</b> <b>12/01/97</b>	<b>EFFECTIVE</b> <b>12/01/97</b>
<b>SUBJECT</b>	<b>COPYRIGHT POLICY</b>	<b>APPROVED BY:</b> <b>Kevin Brooks, Director</b>	
<b>CHAPTER</b>	<b>ADMINISTRATIVE PROCEDURES</b>	<i>Kevin Brooks</i>	

**PURPOSE**

To provide guidance to staff in matters relating to copyrights.

**AUTHORITY**

Public Records Act AS 09.25.100-220 and 6AAC 96.100-900; also AS 16.05.050(2) and (8); and AS 44.99.400. Also Federal Copyright Act.

**REFERENCES**

Savikko, K.E., and R.L. Wilbur. 1997. Commercial Fisheries Management and Development Division, Regional Information Report 5J97-16, Juneau.

**DISTRIBUTION**

All manual holders.

**POLICY**

**Copyrights**

Federal copyright laws assign the creators of written materials, music, visual arts, architecture, databases, and computer software, etc., exclusive rights to determine how and when such material is copied or reproduced (see Savikko and Wilbur, 1997. Item 1). Similarly, patents protect original inventions.

Copyrights do not prevent using copyrighted materials in ways that would alter their original form and content such that the restructured item no longer mirrors, in full or in part, the copyrighted item. For example, a book on the birds of Alaska can be used by another author to develop a different but very similar book on the same subject, provided none of the graphical material or verbatim text was used without the original author's permission. Copyrights, therefore, only protect against copying or other unauthorized uses, and that protection is of limited duration, generally from 50 to over 100 years (see Savikko and Wilbur, 1997. General Comments).

**Material Copyrighted to the Department of Fish & Game**

A department employee creating copyrightable materials on state time does not own the copyright; instead, under Section 201 (*works made for hire*) of the Copyright Act, these materials become the intellectual property of the department or State of Alaska. Reproduction of these works, other than by the department, requires written permission by the department, except as allowed under the *fair use* provisions of the copyright act (this generally allows an individual to make a single copy of copyrighted material for a research or educational purpose -- see *Fair Use* section below).

Copyrights, while historically most important for artistic and literary creations with commercial value, are becoming increasingly important for intellectual property such as research results, computer software, databases, etc. Copyrights thwart piracy of intellectual property and facilitate recouping damages from piracy. In addition, copyrights help to ensure proper credit for copyrighted materials copied or republished by others. Hence, copyright issues for states are increasing. States have not customarily charged royalties (percentage of each copy sold) or licensing fees (flat one-time fee) for use of their copyrighted materials, but as state budgets shrink and intellectual innovation by states increases, the need to more judiciously manage state copyrights has become increasingly important.

If the department's copyrighted material is to be reproduced by someone outside of state government, the department may elect to (1) license the use with a royalty or fee and impose appropriate conditions, (2) license the use and condition the request without seeking a royalty or fee, or (3) deny the request (see section below, *Licenses and Requests to Reproduce Department Copyrighted Materials*).

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### **Copyrights and Department Contracts**

Copyrightable materials created by an independent contractor hired by the department are not automatically “works made for hire,” and special provisions must be provided to ensure the copyright belongs to the department. Under sections 101 and 102 (b) the following nine categories of works provided under contract can become the department’s intellectual (copyright) property: a work specially ordered or commissioned for use as a (1) contribution to a collective work, (2) part of a motion picture or other audiovisual work, (3) translation, (4) supplementary work (as secondary adjunct to work by another author), (5) compilation, (6) instructional text, (7) test, (8) answer material for a test, or (9) atlas. If the work satisfies one of these categories, a written agreement between the department and the contractor specifying that such contract products are to be prepared as “works made for hire” is needed to ensure the ownership of the copyright belongs to the department. In addition, copyrights of contractual works that fall outside these nine categories can be transferred to the department. Therefore, all department contracts should expressly address the question of whether or not copyright ownership will belong to the department under a “work made for hire” or through copyright transfer. Contracts should also describe any limitations on use of copyrighted materials (see Savikko and Wilbur, 1997. Item 6).

Although intellectual property produced by federal employees within their official duties are not copyrighted and are usually considered to be *public domain* (i.e., not copyrighted), when the federal government commissions work by the department, through grant or contract, copyrights can be provided to the department (see Savikko and Wilbur, 1997. Item 38).

### **Copyright Protection vs. Public Disclosure**

While materials copyrighted to the department may not be reproduced except as allowed by the department, this should not be confused with disclosure of public records as set forth in AS 09.25.100 — 09.25.220 and 6 AAC 96.100 — 900. These state laws and regulations ensure that public records are available to the public for inspection and that reasonable numbers of copies be provided by the state agency, which is quite different than an individual or company making unauthorized and unlimited copies of state copyrighted materials.

### **Fair Use**

This section of the copyright law is complex (see Savikko and Wilbur, 1997. Item 16); however, copies of copyrighted materials can ordinarily be made by anyone without seeking the copyright owner's permission as follows:

1. a single copy for *personal use* (includes job-related use by an individual) in research or education (Note: *personal use* in a recent court decision means that you promptly read and study the article, not simply copy and file it away in your library for a rainy day; nor can you aggregate papers to form a collective work for personal use);
2. a single copy for each member of a group assembled for research or educational purposes; and
3. similarly, a single-copy reproduction of software for educational use can be made but must be retrieved and destroyed after the use is completed, unless the software is in the public domain.

A state employee should only reproduce/copy of copyrighted materials for personal use as described above. Other uses would require approval from the copyright owner (see section below, *Staff Use of Copyrighted Material*).

### **Licenses and Requests to Reproduce the Department’s Copyrighted Materials**

Copyright transfers (exclusive licenses) and nonexclusive licenses of scientific manuscripts prepared for external journal or symposium publication by department staff should be approved by divisional editor (i.e., the individual within the respective division responsible for approving release of manuscripts for external publication).

All other requests for copying or reproducing the department's copyrighted materials, except as allowed under *fair use*, or to release or to license the use of department copyrights should only be acted upon by the appropriate division director or the commissioner according to the following guidelines:

1. Intellectual property copyrighted to the State of Alaska belongs to the residents of Alaska. Consistent with the Public Records Act, the department will therefore protect the overall public interest in authorizing use of the department’s intellectual property and in deciding whether to charge a royalty or license fee or require special stipulations.

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1. In general, reproduction of the department's copyrighted material will be encouraged if the public clearly receives a benefit from the requested use. Stipulations attended to approved uses of the department's intellectual property should be included, as needed, to ensure the requested use acknowledges the public's role in developing this material.
2. The department's intellectual property should not be reproduced by private or other governmental agencies in such a manner that it represents the material as their own. Therefore, permission to reproduce the state's intellectual property should include a stipulation that the requester(s) properly credit the department.
3. In granting a license, the department may also require disclaimers be included on reproductions to exonerate the state from liability for errors or deficiencies in reproduction.
4. Requests for private commercial reproduction of the department's intellectual property should be considered on a case-by-case basis. If the department determines the public would clearly derive an associated benefit, the request may be granted. In making that determination, the department may consider the fees the public would have to pay for this commercial product (Savikko and Wilbur, 1997. Item 25 provides procedural details).
5. The department may levy appropriate and reasonable royalties or fees to offset public funding used to develop its intellectual property and to offset fees the public may be charged to purchase the commercial product. If the fees are high and the public or state benefits are comparatively low, requests may not be in the overall public interest and may be accordingly denied. The department should consider the fair market value of its intellectual property (not the cost to develop the product) and set any royalties or fees accordingly (see Savikko and Wilbur, 1997. Item 25).
6. Requests for reproducing the department's intellectual property should also be denied when the requested use would:
  - a) involve profit-making from sale of reproduced items that the department specifically prepared for free public distribution, except when that item is no longer available and the department has no plans to make additional copies for free distribution,
  - b) create public confusion or mislead the public (e.g., reproducing and distributing information that was inaccurate or out of date), or
  - c) reflect badly on the department (e.g., unseemly uses, poor quality of reproduction).

**Internet and Copyrights**

Subject to *fair use*, such as limited copying for purposes of scientific research or criticism, the unauthorized copying and posting of material contained on a department web page to another web page constitutes copyright infringement. A person seeking to copy material from a department web page to another web page must first obtain permission from the department. This is different than downloading materials for uses allowed under *fair use*, such as making a paper copy for subsequent reading. Likewise, copying copyrighted materials posted on the Internet for inclusion on a department web page could be an infringement of copyright, unless the copyright holder licensed such use.

**Department Copyright Notice**

Copyright protection begins automatically from the moment the work is created in fixed form and begins without any formality, process, or application. The standard copyright notice (e.g., "© 1996 Alaska Department of Fish and Game") is not required to establish copyright. Nevertheless, copyright notice should be included on the department's formal publications and any other important materials the department may want to inform users of its copyright. Occasionally, special materials that need the highest possible level of copyright protection (e.g., department logo, computer program) should be registered with the federal copyright office and might additionally be protected under federal and state trademark laws (see Savikko and Wilbur, 1997. Item 34).

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Under Section 407 of the Copyright Act, if the materials include a copyright notice, you must, within three months of the date of publication, send two complete copies of the material to the Register of Copyrights for filing with the Library of Congress (note: failure to comply, upon written demand by the Register, can make the department subject to fines). Send two copies to:

Register of Copyrights  
Copyright Office  
Attn: 407 Deposits  
Library of Congress  
Washington, D.C. 20559-6000

**Staff Use of Copyrighted Material**

When staff are not sure whether the "fair use" provision of the Copyright Act would allow copying of a needed work, staff should request copies or copying permission from the copyright owner or the owner's designated agent, which may include the Copyright Clearance Center (222 Rosewood Drive, Danvers, MA 01923; phone 508-750-8400; Internet address <http://www.copyright.com>). This center can provide prompt authorization to photocopy many copyrighted materials and bill and receive any attendant royalty payments. Also, if you plan to reproduce department-copyrighted material outside your job other than as allowed under *fair use* (see above), you will need to secure the department's permission first.

Staff planning to reprint or republish articles or parts of articles (e.g., a figure or table) that were previously published in periodicals, books, etc., will need to secure permission from the copyright owner. Keep in mind that most journals are the copyright owners of the papers they publish, not the authors; i.e., authors generally transfer their original copyrights to the journal. However, if all the authors of a paper were federal employees and the paper was developed within the scope of their official duties, then no copyright exists, and you may use the material without permission (however, do cite the source of the material).

When requesting a copyright owner's or their designated agent's permission to copy, republish, or reprint their material, prepare a letter of request that includes the following: (1) explain the nature of the request, and (2) include pertinent source of information (e.g., year, volume, number, edition, pages or portions of a page) that clearly identifies the material. Include an approval line below your signature on the letter, as shown below, and enclose a self-addressed and stamped return envelope.

Permission Granted:

\_\_\_\_\_

(signature)

\_\_\_\_\_

(date)

If there is no response, staff should not assume permission to be granted. Permission is essential because state employees acting in their official capacity are not immune from being sued in federal court for copyright infringement (see Savikko and Wilbur, 1997. General Comments).