

**Policy Title: Reproduction University of Copyrighted Materials for Teaching
California Policy on Copyright and Fair Use
Research**

I. POLICY SUMMARY

~~The Policy and Guidelines are intended to encourage the legitimate educational use of photocopied materials and to reduce the University's potential liability.~~ It is the policy of the University to encourage the wide dissemination of information and knowledge for its teaching, research, and public service mission, while also complying with copyright infringement. ~~The assumption of the Guidelines is that individual University employees will take responsibility for making the necessary decisions respecting compliance with the law. Consequently, it is essential that the Policy and Guidelines be widely distributed and that faculty and staff be made fully aware of their contents.~~

II. DEFINITIONS

~~Not applicable.~~

II. DEFINITIONS

N/A

III. POLICY TEXT

~~In the course of their duties, faculty and Faculty, staff, and students of the University of California may wish to use photocopied materials in the classroom and created by other people for research. In many cases, photocopying can facilitate the University's missions the purposes of teaching, learning, research, and/or public service. The University therefore wishes to encourage encourages the appropriate use of such material within the spirit restrictions and the letter permissions of the United States Copyright Law (Title 17 United State Code).~~

Copyright is a constitutionally conceived property right which is designed to promote guaranteed in the creation and dissemination United States Constitution to creators of original works of authorship. That purpose is implemented by giving a copyright owner. Content creators are granted certain exclusive rights with respect to the owner's their work, subject to certain limitations, including the right

to reproduce, modify, distribute, perform, display, and publicly perform their work in the mutual interest of the author, the owner, and the public. These rights include all media. Because these rights are exclusive rights of reproduction, preparation of derivative works, distribution, and performance, content creators may also prohibit others from using their work without permission. The University strongly believes that these rights are the right of content creators to control the use of their work is vital in maintaining a free flow of ideas in our society.

A major limitation on the exclusive rights granted to the copyright owner is the doctrine of "fair use" (17 United States Code, Section 107) which permits certain limited copying of copyrighted works for educational or research purposes without the permission of the copyright owner. "Fair use" is a limited exception to the exclusive use of the copyright owner, which if exceeded, can subject the one making unauthorized copies and the University to severe penalties. The wide availability of copying machines has created a situation where this exception can easily be breached.

To provide guidance to all University employees, the attached Guidelines are to be used to determine whether copying is within the "fair use" doctrine. If the copying is not within the Guidelines, permission should be obtained from the copyright owner before any copies are made. If it is unclear whether copying would require such permission guidance should be requested from the Office of the General Counsel.

It is important that this Policy and Guidelines be widely distributed so that the numerous users of photocopied materials in the University will be aware of the Copyright Law.

COMPLIANCE / However, copyright law also provides a limited right to reproduce, modify, distribute, display, and publicly perform works created by others for certain purposes including, for example, criticism, comment, news reporting, teaching, scholarship, or research, among others. This right is known as fair use. The University also strongly believes that the right of content consumers to access copyrighted works under fair use to further disseminate knowledge is paramount for the promotion of academic freedom, creative expression, education and instruction, and ultimately, the full participation by all members of society in furthering the pursuit of knowledge.

The University has a societal obligation to promote the wide dissemination of information and knowledge to and among its students and faculty, as well as the public at large, as part of its overall educational and research mission. The University encourages both respect for the copyrights of content creators as well as the thoughtful invocation of fair use principles by content consumers within the bounds set forth in U.S. copyright law to support those goals.

Whether a particular use of copyrighted content constitutes fair use is outside the purview of this policy statement. General copyright advice is available at <http://copyright.universityofcalifornia.edu>, and the University encourages all members of the University community to review that information and to contact

~~their campus counsel office or the Office of General Counsel when further advice may be needed.~~

IV. RESPONSIBILITIES

~~The Policy and accompanying guidelines are intended to encourage the legitimate educational use of photocopied materials and to reduce the University's potential liability for copyright infringement.~~

~~The assumption is that individual University employees will take responsibility for making the necessary decisions respecting compliance with the law. Consequently, it is essential that the Policy and guidelines be widely distributed and that faculty and staff be made fully aware of their contents.~~

~~N/A~~

V. PROCEDURES

A. Introduction

~~The purpose of these Guidelines is to provide direction on photocopying of copyrighted materials for teaching and research. Some kinds of works are not covered by copyright and therefore may be freely reproduced and distributed. Examples of such works are presented in Section B.~~

~~Under the "fair use" provision of the Copyright Act of 1976, you are permitted to photocopy and distribute portions of copyrighted works for educational use without securing permission from the owner or paying royalties. The law in this area is quite general, however, and it is important that certain conditions are met to insure that the copying does fall under this fair use exemption. Section C describes the explicit factors that you should take into consideration before reproducing and distributing copyrighted materials.~~

~~Situations may arise in which intended copying is not exempted under fair use. In such cases it is necessary to obtain written permission from the copyright owner before copying is done. Section D explains some kinds of circumstances that require you to obtain permission. Information on securing permission can be found in Section VI, below. It is the policy of the University that users secure such permission whenever it is legally required.~~

B. Unrestricted Photocopying

1. Uncopyrighted Published Works

~~Anyone may reproduce without restriction works that entered the public domain. Any work published in the U.S. before January 1, 1978 without a copyright notice entered the public domain.~~

Copies of works protected by copyright must bear a copyright notice, which consists of the copyright symbol (a letter "c" in a circle, the word "Copyright" or the abbreviation "Copr.") plus the year of first publication for books and the name of the copyright owner. Prior to 1/1/78, in the case of a book or other printed publication, this notice had to be on the title page or the page immediately following; for periodicals, on the title page, the first page of the text of each separate issue or under the title heading. "Notice" requirements for works published after 1/1/78 have been relaxed somewhat with respect to both the position of notices and inadvertent omission of these, so there may be limited protection for some works on which notices do not appear. However, in such instances, if you were to innocently infringe a copyright, in a reliance upon an authorized copy from which the copyright notice had been omitted, there would be no liability for actual or statutory damages for any infringing acts committed before receiving actual notice of copyright registration, if it is proved that you were misled by the omission of copyright notice; in such a case, a court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require the infringer to pay the copyright owner a reasonable license fee as a condition of continuation of the infringing undertaking.

2. Published Works with Expired Copyrights

Anyone may reproduce without constraint published works whose copyrights have expired. All U.S. copyrights dated earlier than 75 years ago have expired. Copyrights dated later than that may also have expired because the initial period of copyright protection prior to 1978 is for 28 years if there is no renewal. The work probably will not contain notice of the renewal. We recommend that you either assume the protection is still in effect for copyrights more recent than 75 years old, or ask the owners of them (or the U.S. Copyright Office) whether they are still subject to copyright protection. Usually publishers are either the owners or know the owners' locations. If not, owners may be located through the U.S. Copyright Office in Washington, DC.

3. U.S. Government Publications

U.S. Government publications are documents prepared by an officer or employee of the U.S. Government as part of that person's official duties. Government publications include the opinions of courts in legal cases, Congressional Reports on proposed bills, testimony offered at Congressional hearings, and reports of government employees. Works prepared by outside authors on contract to the Government may or may not be protected by copyright. As with other publications, copyright notices may be in the front (for pre-1978 publications) or on the front and back (in works published since 1/1/78. In the absence of copyright notice in such works, it would be reasonable to assume they are in the public domain.

C. Permissible Photocopying of Copyrighted Works

Teachers may reproduce copyrighted works for classroom use and for research without securing permission and without paying royalties when the circumstances amount to what the law calls "fair use."

1. "Fair Use" – Current Law

In determining whether the use is a "fair use" the law requires consideration of the following factors (17 U.S.C. sec. 107):

- a. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
- b. the nature of the copyrighted work;
- c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d. the effect of the use upon the potential market for or value of the copyrighted work.

The Guidelines in this report discuss the boundaries for fair use of photocopied material. Fair use cannot always be expressed in numbers – either the number of pages copied or the numbers of copies distributed. Therefore you should weigh the various factors in the Act to determine whether the intended use of photocopied copyrighted material is within the spirit of the fair use doctrine. You should secure permission from the copyright owner unless the intended use is clearly permissible under fair use.

2. UC Guidelines for Determining "Fair Use"

Educators including representatives of higher education developed, along with publishers, a set of minimum standards of fair use which were set forth in the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (the Ad Hoc Committee Guidelines).

These standards are reproduced in their entirety in Appendix 1 and can be used as a practical approach to determine fair use. Any copying that falls within the Ad Hoc Committee Guidelines is considered to be fair use and permissible.

Since these standards are often not realistic in a University setting, the following Guidelines should be used to judge if intended photocopying of copyrighted materials constitutes fair use in teaching and research at the University of California.

a. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- i. A chapter from a book;
- ii. An article from a periodical or newspaper;

- iii. ~~A short story, short essay or short poem, whether or not from a collective work;~~
- iv. ~~A chart, graph, diagram, cartoon, or picture from a book, periodical, or newspaper;~~

b. ~~Multiple Copies for Classroom Use~~

~~Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion provided that:~~

- i. ~~The copying does not substantially exceed the test of brevity as defined below; and~~
- ii. ~~Meets the cumulative effect test as defined below; and~~
- iii. ~~Each copy includes a notice of copyright.~~

1. ~~Definitions~~

a. ~~Brevity~~

- 1) ~~Poetry: A complete poem if less than 250 words or, from a longer poem, an excerpt of not more than 250 words.~~
- 2) ~~Prose: Either a complete article, story or essay of less than 2,500 words or an excerpt of not more than 2,500 words from any prose work.~~
- 3) ~~Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue. In some cases, such illustrations are copyrighted individually and cannot be reproduced under fair use. (See D.3. below)~~

b. ~~Cumulative Effect~~

- 1) ~~The copying of the material is for only one course per class term of the instructor for whom the copies are made.~~
- 2) ~~Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.~~
- 3) ~~There shall not be more than nine instances of such multiple copying for one course during one class term.~~

~~The limitations stated in (1) and (2) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.~~

2. ~~Prohibitions as to a) and b) above~~

~~Notwithstanding any of the above, the following shall be prohibited:~~

- ~~a. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets, answer sheets, and like consumable materials.~~
- ~~b. Copying shall not:
 - 1) substitute for the purchase of books, publishers' reprints, or periodicals;
 - 2) be directed by higher authority;
 - 3) No charge shall be made to the student beyond the actual cost of the photocopying.~~

~~3. Situations Not Specifically Covered by UC Guidelines~~

~~The doctrine of "fair use" may permit reproduction of copyrighted works in excess of the word limit restriction specified in the UC Guidelines.~~

~~1. Since this is an area of unclear legal definition, you should use caution and discretion in such copying and should seek advice from the General Counsel's Office for a legal opinion, or request prior written permission directly from the copyright owner to perform copying substantially the limits enumerated in the Guidelines.~~

~~2. Any questions regarding the application of the Guidelines in specific cases, whether a work is covered under copyright protection, or the ways to secure permission from publishers should also be referred to the General Counsel.~~

~~**D. Copying Requiring Prior Written Permission from the Copyright Owner**~~

~~1. Copying for Profit~~

~~"Fair use" extends only to nonprofit copying. Teachers should not charge students more than the actual cost of photocopying, and should not make copies for students who are not in their classes without obtaining permission. This applies to classroom copies made and distributed by a commercial copy center outside the University, as well as University facilities.~~

~~2. Unpublished Works~~

~~One should obtain permission from owners of unpublished works in order to copy from them. The law gives automatic copyright protection to unpublished works from the time they are created until they are published. Unpublished works, such as theses and dissertations, may be protected by copyright. If such a work was created before January 1, 1978 and was not copyrighted, the work is protected under the new Act for the life of the author plus fifty years after or until December 31, 2002, whichever shall later occur.~~

~~(17 U.S.C. Section 303). Works created after January 1, 1978 and not published enjoy copyright protection for the life of the author plus fifty years. (17 U.S.C. Section 302).~~

~~3. Special Works~~

~~In some cases, certain specialized materials such as maps, anatomical diagrams, and drawings are copyrighted separately even though they appear in a text book or other printed work. In this situation, the reproduction of the material would not constitute fair use even if only one illustration from a book were used. You must obtain permission to reproduce such individually copyrighted materials.~~

~~4. Consumable Works~~

~~Teachers must secure prior written permission before making multiple copies of copyrighted works which are intended to be consumed in classroom activities such as workbooks, exercises, and standardized tests and their answers.~~

~~E. ***Infringement***~~

~~Owners of copyrights can attempt to halt infringement by suing for injunctions, impounding or destruction of infringing articles, and can seek costs of suit and attorneys' fees. Additionally, they can seek recoup actual money damages suffered by the copyright owner as well as the infringer's profits. When there are only nominal monetary losses, owners can, instead of seeking their actual damages, claim "statutory" damages up to \$10,000 (or up to \$50,000 if the infringement was "willful"). The University will defend an employee who photocopies in the course and scope of his or her employment duties.~~

~~Even if the copying is held to infringe, the Copyright Act exempts employees of non-profit educational institutions, libraries, or archives from statutory damages, if the employee believed that the copying was a fair use and had reasonable grounds for that belief. Adhering to the Guidelines in **B** and **C** above should afford reasonable grounds for believing one is engaging in "fair use."~~

~~See the UC Copyright Website: <http://copyright.universityofcalifornia.edu>~~

~~The University encourages all members of the University community to review the information on the website, and to contact their campus counsel office or the Office of General Counsel when further advice is needed.~~