

## DRAFT – For Review

### Copyright in the Classroom (*physical and virtual*)

The University of California offers the following guidance for remaining within the bounds of fair use in teaching and research. The suggestions below should be considered minimum standards. If a proposed use is not covered by the guidelines, you should analyze the particular facts of your situation against the four factors of fair use and the questions above in order to best determine whether the copying activity is permitted.

There are no specific guidelines for fair use of copyrighted materials for use outside the context of the classroom, so in such instances you will need to rely on an analysis of the four factors of fair use to make a determination. If necessary, a campus [Copyright Contact](#) may be consulted for assistance in determining whether the contemplated use may be fair. A UC copyright officer may not, however, provide advice about fair use for personal purposes.

**Single Copying for Teachers:** A single copy may be made of any of the following for scholarly research or teaching purposes:

- 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, graph, diagram, cartoon, or picture from a book, periodical, or newspaper

**Multiple Copies for Classroom Use:** Multiple print or digital copies of articles, book chapters, or other works may be made for classroom use or discussion provided that:

- There is a clear connection between the work being copied and the instructor's pedagogical purpose
- The amount copied is tailored to include only what is appropriate for the instructor's specific educational goals
- The access to works distributed online is provided only for the duration of the course for which they are provided, and limited to students enrolled in a course and other appropriate individuals (e.g. teaching assistants for the course)
- Each copy includes full attribution in a form satisfactory to scholars in that field

**Other considerations:** You should not copy works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets, and answer sheets. Copying should not substitute for the purchase of books, or periodicals.

**Some examples of activities that courts have regarded as fair use:**

- Quotation of excerpts in a review or criticism for purposes of illustration or comment
- Quotation of short passages in a scholarly or technical work, for illustration or clarification
- Parody of the content of the work
- A summary of an address or article, with brief quotations
- Reproduction of a small part of a work by a teacher or student to illustrate a lesson
- Reproduction of a legislative report or judicial proceeding

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- Incidental and fortuitous reproduction, such as in a news report or broadcast

The Technology, Education, and Copyright Harmonization (TEACH) Act was passed in November 2002 as an amendment to the face-to-face performance and display exemption of copyright law (sections [110\(2\)](#) and [112](#)). ~~It updates the older distance education statute to include instruction via digital networks so that instructors may have greater freedom to use copyrighted works in teaching without having to obtain permission from copyright owners.~~ The ~~exemption is somewhat~~ requirements for compliance are somewhat complex ~~and includes numerous requirements~~, and should be considered asis only one of several options available to instructors when using copyrighted works in their courses.

The TEACH Act primarily expanded the copyright exemption for online instruction, including the range of allowable works in distance education settings. It permits the performance or display of complete non-dramatic literary or musical works, such as the reading of a poem or short story, or listening to music other than opera or musicals. Showing films or videos is still restricted to limited portions. The TEACH Act also expanded the permissible locations for accessing distance education beyond classrooms or computer labs.

### Duties and requirements for instructors:

There are numerous conditions and requirements for complying with the terms of the TEACH Act. Use of digital materials must be part of "mediated instructional activities," must be the same type of materials that an instructor would use as a part of a classroom session, and must be directly related to the content of the course. Ancillary works that might be viewed or listened to outside of class are not included under the exemption. The TEACH Act permits digitizing analog works as long as the works are not already available in digital form. Commercial works marketed for the educational market, such as electronic texts or workbooks, cannot be used under the TEACH Act exemption, and paper versions of these works cannot be digitized. In order to retain the protection offered by the TEACH Act, all materials used in the course must be legally obtained.

### Institutional requirements established under the TEACH Act:

The benefits of the TEACH Act apply only to accredited non-profit educational institutions or government bodies. Institutions must have policies regarding copyright, and must disseminate copyright information and promote copyright compliance. Institutions must also provide notice to students that course materials may be copyright protected.

Institutions should limit the transmissions to students enrolled in the particular course to the extent technologically feasible.

### **In short, the following actions are allowed in distance education settings under the TEACH Act:**

- Display (showing of a copy) of any work in an amount analogous to a physical classroom setting.
- Performance of nondramatic literary works.

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- Performance of nondramatic musical works.
- Performance of "reasonable and limited" portions of other types of work (other than nondramatic literary or musical work) EXCEPT digital educational works.
- Distance-education students may receive transmissions at any location.
- Retention of content and distant student access for the length of a "class session."
- Copying and storage for a limited time or necessary for digital transmission to students.
- Digitization of portions of analog works if no digital version is available or if digital version is not in an accessible form.

### **The following are NOT allowed in distance education:**

- Works that are marketed as part of mediated online instructional activities (commercially available digital educational materials)
- Unlawful copies of copyrighted works under the U.S. Copyright Law, if the institution "knew or had reason to believe" that they were not lawfully made and acquired.