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Fair use in teaching and research

The 1976 Copyright Act¹ provides important exceptions to the rights of the copyright holder that are specifically aimed at nonprofit educational uses of copyrighted works and libraries. Two provisions of the copyright statute are of particular importance to teachers and researchers:

- a provision that codifies the doctrine of "fair use," under which limited copying of copyrighted works without the permission of the owner is allowed for certain teaching and research purposes; and
- provision that establishes special exemptions for the reproduction of copyrighted works by libraries and archives.

The "fair use" doctrine embodied in the Fair-Use Statute Section 107² of the 1976 Copyright Act, allows reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research for educational and research purposes. For more information on fair use, see Using Copyrighted Works of Others.³

Four factors of fair use

This statute lists the following factors as the ones to be evaluated in determining whether a particular use of a copyrighted work is a permitted fair use:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes -- uses in nonprofit educational institutions are more likely to be fair use than works used for commercial purposes, but not all educational uses are fair use.
- the nature of the copyrighted work -- reproducing a factual work is more likely to be fair use than a creative work such as a musical composition
- the amount and significance of the portion used in relation to the entire work -- reproducing smaller portions of a work is more likely to be fair use than large or essentials portions

¹ U.S. Copyright Office, Copyright Law of the US <http://www.loc.gov/copyright/title17/>

² U.S. Copyright Office, Copyright Law of the US, links directly to section 107, "Limitations on exclusive rights: Fair Use" <http://www.copyright.gov/title17/92chap1.html> - 107

³ UCOP Office of Technology Transfer, <http://www.ucop.edu/ott/crothers.html>

- the impact of the use upon the potential market for or value of the copyrighted work -- uses which have no or little market impact are more likely to be fair than those that interfere with potential markets.

The fair use law is purposefully broad and flexible. It requires a thoughtful analysis of each of the four factors based on specific circumstances. In applying the four fair use factors, each factor is relevant in order to determine whether a particular use is a fair use. A final determination on fair use depends on weighing and balancing all four factors against the facts of an individual situation. UC faculty, staff, and students are encouraged to make decisions about a contemplated fair use of copyrighted works in an informed and reasonable manner in order to meet educational and research objectives. For more information on applying the four factors of fair use, see [Fair use tools](#).⁴ If it is unclear whether a particular use is permitted under fair use, you should consider [obtaining permission](#)⁵ to use the work from the copyright owner.

UC policies on photocopying and off-air recording

The University of California has two policies that provide guidance as to whether photocopying and recordings of television broadcasts are within the "fair use" doctrine. The [Policy and Guidelines on the Reproduction of Copyrighted Materials for Educational Purposes](#)⁶ addresses the appropriate use of photocopied materials in the classroom and for research, see [UC Quick Guide]. The [Policy for Off-Air Recording of Broadcast Programming for Educational Purposes](#)⁷ provides explicit guidance for recording television broadcasts, including retention, duplication, and extended use considerations, see [UC Quick Guide]. If photocopying or off-air recording activities are not within these two Guidelines, you should use caution and discretion in such copying or recording. All fair use guidelines should be considered minimum standards. Thus, just because a use is not within these guidelines, it is not necessarily outside the scope of fair use. If a proposed use falls outside the limits of these two guidelines, you should analyze the particular facts of your situation against the [four factors of fair use](#)⁸ in order to conclude that the copyright activity is permitted. If it is unclear whether a particular use is permitted under fair use or if it significantly deviates from the guidelines above, you should consider [obtaining permission](#) to use the work from the copyright owner.

Use and limitations of fair use guidelines

Given the relative uncertainty of applying fair use criteria to educational situations, various groups and organizations have proposed fair use guidelines that interpret and apply the [1976 Copyright Act](#) to common educational situations, see [List of Proposed Fair Use Guidelines](#).⁹ Most of these proposed guidelines are products of negotiations among interested parties holding diverse views and failed to achieve agreement among the participants. None of these proposed guidelines have been enacted into law by Congress, nor have they been adopted as a binding standard of fair use in court decisions. Subsequently, these guidelines, if used, should be considered to state the minimum, not the maximum, extent of the fair use doctrine. Instead, UC faculty, staff, and students should weigh and balance all [four factors of fair use](#) and, if necessary, consult their campus [OTT Copyright Contact](#)¹⁰ to determine whether a potential use of others' works is fair.

⁴ Copyright education web site at: <http://copyright.lib.uci.edu/fairuse.html#tools>

⁵ Copyright education web site at: <http://copyright.lib.uci.edu/permission.html>

⁶ Copyright education web site at: <http://copyright.lib.uci.edu/pgrcmtrp.html>

⁷ Copyright education web site at: <http://copyright.lib.uci.edu/porbpep1.html>

⁸ Copyright education web site at: <http://copyright.lib.uci.edu/fairuse.html#2>

⁹ Copyright education web site at: <http://copyright.lib.uci.edu/permission.html>

¹⁰ UCOP Office of Technology Transfer, <http://www.ucop.edu/ott/crcontac.html>

