



OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

March 25, 2015

**EXECUTIVE VICE CHANCELLORS/PROVOSTS
LABORATORY DIRECTOR ALVISATOS
ACADEMIC COUNCIL CHAIR GILLY
ANR VICE PRESIDENT ALLEN-DIAZ**

RE: Final Review of the UC Policy on Copyright and Fair Use

Dear Colleagues:

Enclosed for Final Review is draft UC Policy on Copyright and Fair Use. Currently known as the 1986 Policy on the Reproduction of Copyrighted Materials for Teaching and Research, the revised policy is intended to be a clear statement by the University in support of copyright law and in defense of the “fair use” principle.

A key reason for undertaking the revision was that the guidelines that are included as part of the 1986 policy are obsolete, as confirmed by a recent appellate court opinion.¹ Policies may take years to revise, while interpretation of copyright law may evolve quickly based on court decisions and amendments. By removing guidelines from the policy, the University is not trying to provide less guidance; the written guidance that faculty, students, and staff seek for understanding copyright and fair use is more appropriately located on the [UC Copyright website](#), which is maintained by the [SLASIAC Standing Subcommittee on Copyright Policy](#)² and is regularly edited and updated with relevant information by experts in the field. The site includes resources such as:

- [Information on use of copyrighted materials in the classroom](#)
- Frequently asked questions about [copyright ownership](#) and [use of copyrighted works](#)
- [A summary of who owns copyright for different types of works created at UC](#)

¹ Cambridge University Press v. Patton (11th Cir. Oct. 17, 2014). The decision made clear that the 1976 Classroom Copying Guidelines are not an appropriate lens to rely upon for fair use determinations.

² The Subcommittee composition is defined in the SLASIAC (Systemwide Library and Scholarly Information Advisory Committee) charge: “In addition to the Chair, the subcommittee will be composed of: one Academic Council representative (normally, the Vice Chair of Academic Council), three faculty members, one of the CoUL representatives from SLASIAC, a Research Vice Chancellor, the Office of General Counsel representative from SLASIAC, and additional faculty and campus administrators as needed to provide appropriate perspectives, either on an ongoing basis or to address specific policy issues before the Subcommittee.”

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Other options for faculty, staff, and students who need assistance with copyright related matters include campus librarians, who are well-versed in the intricacies of educational uses of copyrighted material, and campus counsel, when appropriate. Many copyright-related questions do not require legal advice. Assistance in determining what type of help is needed with a specific issue can be obtained by sending an email message to copyright@ucop.edu.

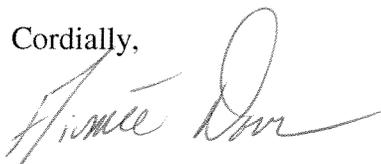
In its comments on the revised draft policy, the Academic Council asked, among other things, that the policy specifically state that the University will “defend employees who reproduce copyrighted materials in the good faith belief that they are doing so in compliance with the law.” A statement to that effect has been added. The current draft also incorporates the faculty’s suggestion to explicitly articulate the University’s responsibility to provide support for the faculty’s copyright concerns.

This Final Review draft of the revised policy was prepared by the SLASIAC Standing Subcommittee on Copyright Policy after analyzing comments received during Systemwide Review. This new draft was approved by the University’s Systemwide Library and Scholarly Information Advisory Committee (<http://libraries.universityofcalifornia.edu/slasiac>) on February 27, 2015.

Final Review is intended to advise as to the results of the Systemwide Review and how language has been refined. We do not anticipate substantive revisions during Final Review. This stage of consultation is intended to resolve prior discussions and to answer remaining questions.

Comments on this revision may be submitted to Joanne Miller (joanne.miller@ucop.edu) by **April 30, 2015**. Questions or requests for information may be directed to Joanne Miller via email or phone (510) 587-6141. The draft revised policy and all background materials may be found online at: (<http://libraries.universityofcalifornia.edu/sscp/resources>).

Cordially,



Aimée Dorr, Provost
Executive Vice President for Academic Affairs

Enclosures: Final Review draft of UC Policy on Copyright and Fair Use
Current UC Policy on the Reproduction of Copyrighted Materials for
Teaching and Research
Redline version comparing the Final Review draft and current policy

cc: President Napolitano
Members of the President’s Cabinet
Chancellors
Vice Provost Carlson

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Vice Chancellors of Research
Vice Provosts of Academic Personnel
Council of University Librarians
Members, Systemwide Library and Scholarly Information Advisory Committee
Academic Personnel Directors
Deputy General Counsel Woodall
Deputy General Counsel Drown
Executive Director Baxter
Executive Director Fox
Executive Director Tanaka
Director Chester
Director Henderson
Director Lockwood
Manager Donnelly
Manager Lane
Principal Analyst Miller
Human Resources Analyst Bello
Senior Administrative Analyst Rupert
Analyst Jones

Draft Policy for Final Review

Policy Title: University of California Policy on Copyright and Fair Use

Responsible Officer:	Vice Provost Susan Carlson
Responsible Office:	Academic Personnel and Programs
Origination Date:	April 29, 1986
Date of this Revision	TBD, 2015
Scope:	Faculty, academic appointees, staff, and students.

Contact:	Joanne Miller
Title:	Library Planning Analyst
Email:	joanne.miller@ucop.edu
Phone:	(510) 587-6141

I. POLICY SUMMARY

To fulfill its teaching, research, and public service mission, it is the policy of the University of California to encourage the broad dissemination and use of information in accordance with copyright law. The University will defend its employees who use copyrighted materials in an informed, good faith manner and within the scope of their University employment.

II. DEFINITIONS

N/A

III. POLICY TEXT

Faculty, staff, and students of the University of California may wish to use materials created by others for the purposes of teaching, learning, research, or public service. The University encourages the appropriate use of such materials within the scope of copyright law.

As described in the U.S. Constitution, the purpose of copyright is to “promote the Progress of Science and useful Arts.” Copyright owners are granted certain

exclusive rights to their works for a limited time, including the right to reproduce, modify, distribute, display, and publicly perform their works. Because these rights are exclusive, such creators may prohibit others from using their works without permission in many circumstances.

Copyright law in the U.S. includes a number of exceptions to copyright owners' exclusive rights. The most flexible of these exceptions is "fair use." Fair use allows people and organizations to reproduce, modify, distribute, display, and publicly perform works created by others in certain circumstances and for certain purposes, including criticism, comment, news reporting, teaching, scholarship, or research. In addition to the purpose and character of the proposed use, fair use requires consideration of the nature of the copyrighted work, the amount and substantiality of the portion of the original work used, and the effect of the use upon the potential market for (or value of) the copyrighted work.

Determining whether fair use applies can be complex and is generally handled on a case-by-case basis. The University will provide general guidance and resources for faculty and others to aid their understanding of copyright and help them follow the law. Members of the University community are encouraged to review the copyright and fair use guidelines available on University's copyright website (<http://copyright.universityofcalifornia.edu>), among other resources, and to contact their campus librarians, campus counsel office, or the Office of General Counsel if further advice is needed.

In the unlikely event of a copyright infringement claim, the University will defend its employees who acted within the scope of their University employment and who made use of the copyrighted work at issue in an informed, reasonable, and good faith manner. The University will do so to the greatest extent provided under the relevant laws and policies.

The University believes that the right of instructors, students, and others to access and share copyrighted works within the scope of the fair use doctrine 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 encourages respect for the rights of copyright owners as well as the thoughtful invocation of fair use principles within the bounds set forth in copyright law to support those goals.

IV. RESPONSIBILITIES

N/A

V. PROCEDURES

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

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

VI. RELATED INFORMATION

Related Policies:

UC Copyright Ownership Policy
(<http://policy.ucop.edu/doc/2100003/CopyrightOwnership>)

Ownership of Course Materials Policy
(<http://policy.ucop.edu/doc/2100004/CourseMaterials>)

UC Open Access Policy (<http://osc.universityofcalifornia.edu/open-access-policy/>)

Digital Millennium Copyright Act Guidelines
(<http://policy.ucop.edu/doc/7000472/DMCA>)

Other Information:

UC Copyright Website (<http://copyright.universityofcalifornia.edu>)

“Thinking Through Fair Use,” University of Minnesota Libraries
(<https://www.lib.umn.edu/copyright/fairthoughts>)

“Fair Use Evaluator, American Library Association
(<http://librarycopyright.net/resources/fairuse/>)

VII. REVISION HISTORY

This policy was originally issued in 1986 with pages of attached guidelines.

This revised version was issued in _____, with guidelines available on the UC Copyright Website.

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

Responsible Officer:	Vice Provost Susan Carlson
Responsible Office:	Academic Personnel and Programs
Origination Date:	April 29, 1986
Date of this Revision:	TBD, 2015
Scope:	Faculty, academic appointees, staff, and students

<u>Contact:</u>	<u>Joanne Miller</u>
<u>Title:</u>	<u>Library Planning Analyst</u>
<u>Email:</u>	<u>joanne.miller@ucop.edu</u>
<u>Phone:</u>	<u>(510) 587-6141</u>

I. POLICY SUMMARY

~~The Policy~~To fulfill its teaching, research, and public service mission, it is the policy of the University of California to encourage the legitimate educational broad dissemination and use of photocopied materials and to reduce the University's potential liability for information in accordance with copyright infringement.

law. The assumption of the Guidelines is that individual University employees will defend its employees who use copyrighted materials in an informed, good faith manner and within 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 contentsUniversity employment.

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 for research. In many cases, photocopying can facilitate the University's missions created by others for the purposes~~ of teaching, ~~learning,~~ research, ~~and/or~~ public service. The University ~~therefore wishes to encourage~~encourages the appropriate use of such ~~material~~materials within the ~~spirit and the letter of the United States Copyright Law (Title 17 United State Code).~~

~~Copyright is a constitutionally conceived property right which is designed to promote the creation and dissemination of original works of authorship. That purpose is implemented by giving a scope of copyright owner certain exclusive rights with respect to the owner's work, subject to certain limitations, in the mutual interest of the author, the owner, and the public. These rights include exclusive rights of reproduction, preparation of derivative works, distribution, and performance. The University strongly believes that these rights are vital in maintaining a free flow of ideas in our society.~~law.

~~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.~~

As described in the U.S. Constitution, the purpose of copyright is to "promote the Progress of Science and useful Arts." Copyright owners are granted certain exclusive rights to their works for a limited time, including the right to reproduce, modify, distribute, display, and publicly perform their works. Because these rights are exclusive, such creators may prohibit others from using their works without permission in many circumstances.

Copyright law in the U.S. includes a number of exceptions to copyright owners' exclusive rights. The most flexible of these exceptions is "fair use." Fair use allows people and organizations to reproduce, modify, distribute, display, and publicly perform works created by others in certain circumstances and for certain purposes, including

criticism, comment, news reporting, teaching, scholarship, or research. In addition to the purpose and character of the proposed use, fair use requires consideration of the nature of the copyrighted work, the amount and substantiality of the portion of the original work used, and the effect of the use upon the potential market for (or value of) the copyrighted work.

Determining whether fair use applies can be complex and is generally handled on a case-by-case basis. The University will provide general guidance and resources for faculty and others to aid their understanding of copyright and help them follow the law. Members of the University community are encouraged to review the copyright and fair use guidelines available on University's copyright website (<http://copyright.universityofcalifornia.edu>), among other resources, and to contact their campus librarians, campus counsel office, or the Office of General Counsel if further advice is needed.

In the unlikely event of a copyright infringement claim, the University will defend its employees who acted within the scope of their University employment and who made use of the copyrighted work at issue in an informed, reasonable, and good faith manner. The University will do so to the greatest extent provided under the relevant laws and policies.

The University believes that the right of instructors, students, and others to access and share copyrighted works within the scope of the fair use doctrine 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 encourages respect for the rights of copyright owners as well as the thoughtful invocation of fair use principles within the bounds set forth in copyright law to support those goals.

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

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

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

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:***~~

~~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."

E. RELATED INFORMATION

Related Policies:

[UC Copyright Ownership Policy](http://policy.ucop.edu/doc/2100003/CopyrightOwnership)

(<http://policy.ucop.edu/doc/2100003/CopyrightOwnership>)

[Ownership of Course Materials Policy](http://policy.ucop.edu/doc/2100004/CourseMaterials)

(<http://policy.ucop.edu/doc/2100004/CourseMaterials>)

[UC Open Access Policy](http://osc.universityofcalifornia.edu/open-access-policy/) (<http://osc.universityofcalifornia.edu/open-access-policy/>)

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Other Information:

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"Thinking Through Fair Use," University of Minnesota Libraries

(<https://www.lib.umn.edu/copyright/fairthoughts>)

"Fair Use Evaluator, American Library Association

(<http://librarycopyright.net/resources/fairuse/>)

F. REVISION HISTORY

This policy was originally issued in 1986 with pages of attached guidelines.

This revised version was issued in _____, with the guidelines available on the UC
Copyright Owner Website



Reproduction of Copyrighted Materials for Teaching and Research

Responsible Officer:	Vice Provost - Academic Planning, Programs & Coordination
Responsible Office:	AC - Academic Planning, Programs & Coordination
Issuance Date:	4/29/1986
Effective Date:	4/29/1986
Scope:	All University employees

Contact:	Joanne Miller
Email:	joanne.miller@ucop.edu
Phone #:	(510) 587-6141

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 for 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

III. POLICY TEXT

In the course of their duties, faculty and staff of the University of California may wish to use photocopied materials in the classroom and for research. In many cases, photocopying can facilitate the University's missions of teaching, research, and public service. The University therefore wishes to encourage the appropriate use of such material within the spirit and the letter of the United States Copyright Law (Title 17 United State Code).

Copyright is a constitutionally conceived property right which is designed to promote the creation and dissemination of original works of authorship. That purpose is implemented by giving a copyright owner certain exclusive rights with respect to the owner's work, subject to certain limitations, in the mutual interest of the author, the owner, and the public. These rights include exclusive rights of reproduction, preparation of derivative works, distribution, and performance. The University strongly believes that these rights are 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.

IV. COMPLIANCE / RESPONSIBILITIES

See V, Procedures.

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."

VI. RELATED INFORMATION

"Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (the "Ad Hoc Committee Guidelines").
<http://www.unc.edu/~unclng/classroom-guidelines.htm>

Copyright Law: <http://www.law.cornell.edu/uscode/text/17>

Obtaining permission from a copyright owner:
<http://www.universityofcalifornia.edu/copyright/pgrcmtra2.html>

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

VIII. REVISION HISTORY

This policy was reformatted into the standard University of California policy template effective June 1, 2012.