

<b>SUBJECT:</b> Use of Copyrighted Material	<b>Effective Date:</b> 4-28-05	<b>Policy Number:</b> 2-103	
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	<b>Responsible Authority:</b> General Counsel		

**APPLICABILITY/ACCOUNTABILITY:**

These guidelines apply to employees and students of the University of Central Florida.

Please note that the UCF Office of the General Counsel does not advise UCF students; it advises UCF employees only within the scope of their employment. Thus, students are requested to direct any copyright questions to the UCF Library Reference Department.

**POLICY STATEMENT:**

The University of Central Florida requires faculty, staff, and students to abide by applicable copyright law. Pursuant to United States Code, Title 17, Section 101, federal copyright law protects *original works of authorship fixed in any tangible medium*, which includes works of literature, music, drama, film, sculpture, visual art, architecture, and other creative media. Before others perform any of the activities protected as the owner's exclusive rights, they must obtain the owner's permission. If a copyright owner discovers that someone has infringed his or her copyright, the owner can recover monetary damages in a court of law.

Typically, the copyright owner must provide permission for another person to exercise the copyright owner's exclusive rights. However, copyright law limits the copyright owner's exclusive rights, allowing fair use of any work for educational, scholarly, and informational purposes. Therefore, whenever fair use applies, the law does not require the copyright owner to grant authorization in order for another person to copy or distribute the copyright owner's work.

The following guidelines are intended to assist in determining whether or not one must obtain authorization to use a copyrighted work for educational, scholarly, or informational purposes. Please contact the Office of the General Counsel for assistance with interpreting these guidelines.

## DEFINITIONS:

**Copyright.** *Copyright is an intangible right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specified period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them* (Black's Law Dictionary).

**Copyright Clearance Center.** The *Copyright Clearance Center* is an organization that provides access to copyright permission for millions of publications worldwide.

**Exclusive Rights.** Pursuant to United States Code, Title 17, Section 106, a copyright owner has several *exclusive rights* with respect to his or her copyrighted work, including the right to copy and distribute his or her work and/or prepare derivative works based on the copyrighted work.

**Fair Use.** United States Code, Title 17, Section 107 states that the *fair use* of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. Below, *fair use* is described in further detail.

**Infringement.** *Infringement* is a violation of law, regulation, contract or right and in particular an invasion of the rights secured by patents, copyrights, and trademarks (Black's Law Dictionary).

**License.** A *license* is a contractual right to use the intellectual property (e.g., copyright) of another. A *license agreement* sets forth the parameters of the rights a copyright owner grants to another person.

## PROCEDURES:

### Fair Use Guidelines

1. Determine whether copyright law protects the work you plan to use

Copyright law does not protect, and you may freely use, the following works:

- works in the public domain. (For an overview of works that are in the public domain, please consult the chart set forth at: <http://www.unc.edu/~unclng/public-d.htm>)
- United States government works
- works to which the author has clearly disclaimed a copyright interest
- ideas, processes, methods, and systems described in copyrighted works
- facts

2. Determine whether you want to exercise an exclusive right

Once you have decided that copyright law protects the work, determine whether you plan to exercise one of the copyright owner's exclusive rights. Federal copyright law states that a copyright owner has the exclusive rights to do or to license others to do any of the following:

- reproduce or make copies of the work
- prepare derivative works based on the work
- sell, rent, or lease copies of the work
- perform the work publicly
- display the work publicly
- perform the work by a digital audio transmission

3. Determine whether you are exempt from the requirement to obtain permission from the copyright owner

Federal copyright law sets forth four exemptions from the requirement to obtain copyright owner permission to exercise a copyright owner's exclusive rights.

- **The Library Exemption:** Pursuant to United States Code, Title 17, Section 108, federal copyright law provides special rights to nonprofit libraries, such as the UCF library. This special exemption includes the right to archive lost, stolen, damaged or deteriorating works; make copies of works for library patrons; and make copies for other libraries' patrons through interlibrary loan.
- **Face-to-face Teaching:** Pursuant to United States Code, Title 17, Section 110(1), members of the University of Central Florida community may publicly display and perform the copyrighted works of other people during face-to-face teaching activities. In essence, United States Code, Title 17, Section 110(1) permits performance and display of any kind of copyrighted work, and even a complete work, as part of face-to-face instruction.
- **Technology, Education, and Copyright Harmonization Act of 2002 (“TEACH”) Act:** Pursuant to United States Code, Title 17, Section 110(2), which codifies the TEACH Act, certain transmissions of copyrighted works in distance education are also permitted (subject to the limitations specified in Section 110(2)).

- The Fair Use Exemption: Read the next section carefully to determine whether your use falls within the fair use exemption.
4. Apply the Guidelines (set forth under 5.-9. below) to determine whether you are exempt from the requirement to obtain permission

If your intended use of the copyrighted work falls squarely within the guidelines (set forth under 5.-9. below), you will most likely be free from liability for copyright infringement; however, there are no guarantees. United States Code, Title 17, Section 107 sets forth a four-pronged test to determine whether an intended use of a copyrighted work is fair:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (2) the nature of the copyrighted work
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- (4) the effect of the use upon the potential market for or value of the copyrighted work

Because this test is highly subjective, it is difficult to know whether your application of the test will stand up in a court of law. For that reason, UCF has chosen to adopt the guidelines (set forth under 5.-9. below) rather than to ask its employees or students to apply the four-pronged test.

Even if you follow the guidelines (set forth under 5.-9. below), it is theoretically possible that a plaintiff could sue you and UCF for copyright infringement, but the copyright law sets forth a good-faith fair use defense, and a successful claim for this defense will likely result if you follow the following guidelines.

5. Guidelines for Classroom Copying of Books and Periodicals

UCF has adopted the 1976 *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals*, found at: <http://www.musiclibraryassoc.org/Copyright/guidebks.htm>. Faculty should apply these guidelines when they make course packs containing excerpts from others' works.

6. Guidelines for Educational Uses of Music

UCF has adopted the 1976 *Guidelines for Educational Uses of Music*, found at: <http://www.musiclibraryassoc.org/Copyright/guidemus.htm>. Faculty should apply these guidelines when performing others' music, reprinting others' sheet music, and maintaining sound recordings of others' music, amongst other activities.

7. Guidelines for Digitizing and Using Others' Works in Electronic Reserves

UCF follows the *Fair-Use Guidelines for Electronic Reserve Systems*, last revised at the "Conference on Fair Use" (CONFU) on March 5th, 1996, and found at: <http://www.utsystem.edu/ogc/intellectualproperty/rsrvguid.htm>. These guidelines apply to UCF's electronic reserve system, a storage facility for electronic versions of academic materials that students may view and print on computers.

8. Educational Fair Use Guidelines for Digital Images

Any time UCF employees or students digitize and use others' images (e.g., an art history slide collection for class use), they should follow the *Educational Fair Use Guidelines for Digital Images*, developed during the CONFU process on December 3rd, 1996, and found at: <http://www.utsystem.edu/ogc/intellectualproperty/imagguid.htm>.

9. Fair Use Guidelines For Educational Multimedia

UCF has adopted the *Fair Use Guidelines for Educational Multimedia*, issued in a non-legislative report by the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives, on September 27th, 1996, and found at: <http://www.libraries.psu.edu/mtss/fairuse/guidelines.html>. Use these guidelines when using others' works in various forms of media as material in academic projects.

10. Seek permission from the copyright owner

Once you have applied the guidelines set forth above and determined that you do not fall squarely within their description of fair use, and you have determined that no other copyright exemption authorizes your use and no license grants you the right to use the work, we recommend that you visit the following web site that provides comprehensive guidance for obtaining permission to use a copyrighted work:

<http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm>

UCF employees and students may also inquire with the UCF Library Reference Department with respect to obtaining information on how to contact the Copyright

Clearance Center for permission to use a copyrighted work that is part of a book or journal article.

RELATED INFORMATION:

United States Code, Title 17, Sections 101-110  
The TEACH Act of 2002, codified in United States Code, Title 17, Section 110(2)

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Ask-A-Librarian: (407) 823-2562

INITIATING AUTHORITY: General Counsel

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