



Reference: *Education Code Sections 32360 and 67302;*  
*US Code Title 17, Copyright Act of 1976*

Employees and students shall not reproduce copyrighted materials without prior permission of the copyright owner, except as allowed by the “fair use” doctrine.

### Fair Use

Reference: *Copyright Act, Section 107*

The “fair use” doctrine permits limited use of copyrighted materials in certain situations, including teaching and scholarship. In some instances, copyright may be required for works that fall within “fair use.”

### Single Copying for Teachers

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

1. A chapter from a book
2. An article from a periodical or newspaper
3. A short story, short essay or short poem, whether or not from a collective work
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

### 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:

1. The copying meets the tests of brevity and spontaneity as defined below; and
2. Meets the cumulative effect test as defined below; and
3. Each copy includes a notice of copyright

### Definitions

- Brevity
  1. Poetry
    - a. A complete poem if less than 250 words and if printed on not more than two pages, or
    - b. From a longer poem, an excerpt of not more than 250 words.

2. Prose
    - a. Either a complete article, story or essay of less than 2,500 words, or
    - b. An excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
  3. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
  4. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph 1 above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.
- Spontaneity
    1. The copying is at the instance and inspiration of the individual teacher; and
    2. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
  - Cumulative Effect
    1. The copying of the material is for only one course in the school in which 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 "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

### Prohibitions

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

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
2. There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
3. Copying shall not:
  - a. substitute for the purchase of books, publisher's reprints or periodicals
  - b. be directed by higher authority

- c. be repeated with respect to the same item by the same teacher from term to term.

No charge shall be made to the student beyond the actual cost of the photocopying.

### Compilations

Reference: *Basic Books, Inc. v. Kinko's Graphics Corp.* (S.D.N.Y. 1991) 758 F.Supp. 1522;  
*Princeton University Press v. Michigan Document Services, Inc.* (6th Cir. 1996) F.3d 1381

Permission from the copyright owner should be obtained when using excerpts of copyrighted work to create anthologies or "course packs," even if the excerpts fall under the definitions in the "fair use" doctrine.

### Online Courses

Reference: *The TEACH (Technology, Education and Copyright Harmonization) Act; US Code 17, Copyright Act, Sections 110(2) and 112*

The Teach Act provides instructors greater flexibility to use third party copyrighted works in online courses. An individual assessment will be required to determine whether a given use is protected under the Act. The following criteria are generally required:

- The online instruction is mediated by an instructor.
- The transmission of the material is limited to receipt by students enrolled in the course.
- Technical safeguards are used to prevent retention of the transmission for longer than the class session.
- The performance is either of a non-dramatic work or a "reasonable and limited portion" of any other work that is comparable to that displayed in a live classroom session.
- The work is not a textbook, course pack, or other material typically purchased or acquired by students for their independent use and retention, including commercial works that are sold or licensed for the purposes of digital distance education.
- The District does not know, or have reason to know, that the copy of the work was not lawfully made or acquired.
- The District notifies students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

### Rented or Purchased Films

Section 110(1) of Title 17 of the United States Code grants a specific exemption from the copyright laws for performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made.

No license from the copyright holder is required when a teacher at a public school or non-profit educational institution uses a lawfully purchased or rented copy of a movie in classroom instruction. It doesn't matter who purchased or rented the film, so long as it was legally obtained. The exemption is granted for "face-to-face" teaching activities only. This means that the teacher (or a substitute teacher) must be present.

Online courses: Instructors may also rely upon fair use for showing films in an online course, although showing an entire film online also may not constitute fair use. Remotely accessing a film from a central memory storage facility is probably not permitted. See 17 U.S.C. § 1201(a).

Use must be "directly related and of material assistance to the teaching content" of the online class under the supervision of the instructor "as an integral part of a class session offered as a regular part" of the institution's "mediated instructional activities." Requirements ensure fair use is not misused to distribute unauthorized copies of copyrighted material. The school must, to the extent "technologically feasible," limit the reception of the online information to students enrolled in the course (using things like passwords or other identification procedures). The school must have copyright policies; distribute those policies to faculty, staff, and students; and notify students that material used in the course "may be subject to copyright protection." The school must use reasonable technological measures to prevent students from keeping the material beyond the class session (no downloading to the students' hard drives) or from disseminating the material to other people.

Snippets of movies can be shown in the classrooms of public schools and non-profit educational institutions without a license pursuant to Section 110(1) of Title 17. In other contexts, short snippets of films may be used under the Fair Use Doctrine. Section 107 of Title 17 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair use" and, as such, does not require a license. "Fair Use" is limited to relatively small portions of copyrighted materials used for criticism, comment, news reporting, teaching, scholarship, and research. The statute sets out four factors to be considered in determining whether or not a particular use is fair:

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

Film subscription services such as Netflix, Amazon Prime, and Hulu include terms of membership. The terms of the individual contract override any applicable exception to copyright.

Date: 02/02/2021