

# UC Davis Policy and Procedure Manual

## Chapter 250, Intellectual Property

### Section 03, Use of Copyright-Protected Materials

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Responsible Department: Office of Research—Technology Transfer Center

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*Exhibit A, Sample Letter Requesting Permission to Use Copyright-Protected Material Without Charge*

*Exhibit B, Notice Regarding Reproduction of Copyright-Protected Materials*

*Exhibit C, Certification Regarding Instructional Use of Copyrighted Material*

#### I. Purpose

This section identifies issues that should be considered and procedures that should be followed when using copyright-protected materials.

#### II. Definitions

Information on copyright terms related to this section may be found at <http://www.universityofcalifornia.edu/copyright/ownership.html>.

- A. Copyright Infringement--Violation of any of the copyrights of a copyright owner or someone who has been authorized to exercise those rights by the copyright owner. These rights include the right to reproduce, make derivative works, distribute, perform or display publicly, or permit others to do any of these activities.
- B. Fair Use--The Copyright Act provides important exceptions to the rights of the copyright holder that are specifically aimed at nonprofit educational uses of copyrighted works and libraries. Of particular importance to teachers and researchers is the provision called "fair use," under which limited copying of copyrighted works without the permission of the owner is allowed for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research for educational and research purposes. Whether a particular use is "fair use" depends on the facts of the situation and is rarely clear-cut. For education and information on fair use, see V. References or contact the Technology Transfer Center/Copyright.

#### III. Policy

- A. Faculty or staff in charge of a University project involving copying or exercise of any other copyrights are responsible for assuring, to the best of their ability, that the University's activities are in compliance with the requirements of federal and state law and University policies.
- B. Any fees, fines or monetary penalties that are charged for copyright infringement arising from the conduct of University business will normally be paid from departmental budgets.
- C. Only the rights actually needed should be requested.
- D. The University reserves the right to receive a free, nonexclusive, worldwide, and irrevocable license to use (in connection with the University mission) any copyright-protected material produced by a University employee in connection with his or her employment but not within the scope of normal employment duties, whether or not University resources were used for its development. The University shall acquire only a license right, leaving authors free to register copyrights in their own names or to assign remaining rights to publishers or others.

1. The author(s) shall have the right to comment periodically on such material (for example, respecting its currency or accuracy in terms of later work in the same field) and on its use by the University.
  2. The University shall not profit monetarily from its use of such materials.
- E. Computer software, whether commercial or not, is protected by the federal copyright law and is usually available only under a license agreement that grants permission for use of the program under specific terms and conditions. A violation of the license usually revokes the license and can subject the infringer and University to criminal penalties and liability for damages. (See Section 350-26.) Employees who are responsible for non-University software shall assure its protection to the best of their ability, including the obligation of not releasing confidential or trade secret information regarding the software. Departments must assure that users of software are aware of its proprietary nature and of the need for the aforementioned protection.

License agreements may restrict the use of the software to a single location or operating system. Therefore, software that is acquired by the University may be used on a computer in another location, including an employee's home, for the conduct of University business only if the license permits such use. In addition, software acquired by an employee may be used on University-owned computers for the conduct of University business only if the license agreement permits such use. Unauthorized use of software is considered theft by University policy and state and federal statute.

#### **IV. Procedures**

- A. Determine whether a copyright license is needed to use the material.
1. Is the material protected by copyright? If no, you don't need a copyright license to use it.
  2. Is your planned use an exercise of a copyright? If no, you don't need a copyright license to use it.
  3. Is the material old or was it written by a U.S. Government employee? If yes, it might be in the public domain, meaning you don't need a copyright license to use it.
  4. Are there UC and UCD Policies and Guidelines that would limit your use? If prohibited by policy or guidelines, stop here.
  5. Is there a "fair use" or other statutory exception to the license requirement? If yes, you don't need a copyright license to use it, but be sure to include the proper copyright notice. If no, you will need to get a written license prior to using. (See IV.B)
- B. Obtaining rights for University use of copyright-protected material.
1. The campus maintains licenses with ASCAP, BMI and SESAC for public, student use of nondramatic music in their catalogs. You may check a list of represented works on the websites provided by these companies. For assistance in determining whether your use is covered by one of these licenses, contact the Technology Transfer Center/Copyright at [copyright@ucdavis.edu](mailto:copyright@ucdavis.edu).
  2. The ReproGraphics/Quick Copy service will take care of the copyright clearances required

for syllabi they print.

3. Contact the copyright owner directly to ask for a license to use the material.
  - a. The sample letter attached as Exhibit A may be prepared and sent to request permission to use material without a charge. The material to be used and the planned manner of its use should be fully and accurately described; and the request should be prepared and sent to the owner for signature in duplicate, so that both the University and the owner can have a copy bearing original signatures. If sent via email, ask the owner to print out, sign and return one original, as a signature is required.
  - b. If the copyright owner signs and returns the request, the original should be retained by the requesting department for 5 full calendar years after the use, unless the use is in a new copyright-protected work, in which case the license should be retained for the shorter of the life of the two works.
  - c. If a copyright owner requests a royalty (fee) for the use, the requesting department must determine whether the need for University use of the material is commensurate with the fee requested. Appropriate fees are based on relevant factors such as University exclusive rights to materials, territory, length of time of license, types of media, etc. Typically a royalty should not be for the full costs of developing the material.

If the department is willing to pay the royalty and determines it to be reasonable, a copy of the original request to the owner and of the owner's signed response stating permission and the royalty fee should be sent to Accounting & Financial Services to support the direct charge. The requesting department should review any conditions that may be imposed by the copyright owner to ensure compliance and retain correspondence with the license.

- d. The copyright owner's failure to return the signed letter may not be taken as tacit approval, even if the letter says "failure to return within X days shall be taken as approval of this request."
  - e. Since such requests are often a low priority to the copyright holder, the requestor should ask as soon as he/she knows of his/her need for the material and should not proceed until the permission is granted. Failure to allow enough time for a response does not legally justify exercising copyrights without a license.
4. Professional licensing services

There are services you can work with directly, such as the Copyright Clearance Center (for print media), ASCAP, BMI, and SESAC (for music uses not covered by the campus blanket license) that are clearinghouses representing many copyright holders. Additionally, many publishers own the copyright to the material they publish. Almost all of these are accessible through the Internet.

C. Copy machines and computer lab printers

Copyright-protected materials are often reproduced in areas where there are user or departmentally operated copy machines or on printers in computer labs. In order to assure that

users are cautioned about their responsibilities under the copyright law, departments that are responsible for operation and control of copy machines and computer labs with printers must post the warning notice provided in Exhibit B. The notice should be clearly visible, legible, and comprehensible to a casual observer in the immediate vicinity of any copy machine or the place where orders for any machine's use are accepted.

D. Campus reproduction facilities

University facilities that make copies for the University community shall require those asking for services to certify in writing that he/she has either obtained the copyright owner's permission or believes that the copying is within "fair use." A sample form is provided in Exhibit C; variations must be approved by the Technology Transfer Center/Copyright. This requirement is to assure that relevant issues are considered in each case and that the University's good-faith effort to comply with the law is documented.

1. When materials from a variety of sources are to be reproduced as part of a single project, a list of the works, their sources, and the relevant copyright notices may be attached to a single signed copy of the certification form.
2. The copyright owner's permission for the proposed use of the work shall be obtained in writing, and a copy of that permission attached to the certification form unless the use is a "fair use," which shall be so noted and briefly explained.

E. Software licenses

1. Commercial software

Because of the proprietary nature of commercial software, it is usually made available by commercial suppliers only through license agreements. Such license agreements grant permission to use the program under specific terms and conditions. The campus maintains site licenses for most popular software on file with the Purchasing Department (the list of site licenses is available at <http://ucdmm.ucdavis.edu/software/software.html>). All other commercial programs may be obtained by procurement of a license through the Purchasing Department. Refer to Sections 350-25 and 350-26 for procedures for acquisition of commercial software.

2. Non-commercial software

Similarly to commercial software, owners of non-commercial software often have license agreements, but the terms and conditions vary widely and are usually negotiable. Examples of such software include beta tests and software developed by an individual researcher at another institution for his/her personal use. Such licenses should be sent to Technology Transfer Center/Copyright for review and signature.

3. Disposal

Unless specifically allowed by the terms of the license agreement, departments must remove software from computer hardware prior to its disposal (trade-in, transfer, sale, salvage, recycle, or donation).

4. Each department using computer software should maintain records of its software licenses and documentation.

## V. References

### A. Office of the President

1. UC Copyright Web site (<http://www.universityofcalifornia.edu/copyright>).
2. Policy on Ownership of Course Materials, 9/25/03 (<http://www.ucop.edu/ucophome/coordrev/policy/9-25-03copyright.html>).
3. Policy on Copyright Ownership, 8/19/92 (<http://www.ucop.edu/ucophome/coordrev/policy/8-19-92.html>).
4. Policy and Guidelines on the Reproduction of Copyrighted Materials for Teaching and Research, 4/29/86 (<http://www.ucop.edu/ucophome/coordrev/policy/4-29-86.html>).
5. Policy for Off-Air Recording of Broadcast Programming for Educational Purposes, 9/24/85 (<http://www.ucop.edu/ucophome/coordrev/policy/9-24-85.html>).

### B. UCD Policy and Procedure Manual:

1. Section 250-01, Copyright.
2. Section 250-04, Distribution of Copyright-Protected Materials Produced under University Auspices.
3. Section 250-05, Digital Millennium Copyright Act.
4. Section 210-80, Sales of Instructional Materials.
5. Section 310-20, Printing and Duplicating.
6. Section 330-86, Course Materials Fees.
7. Section 350-25, Procurement Through the Purchasing Department.
8. Section 350-26, Acquisition of Computers, Computing and Networking Equipment, and Commercial Software.

### C. Federal law

1. U.S. Copyright Office (<http://www.copyright.gov>).
2. U.S. Code, Title 17, Copyrights (<http://www.access.gpo.gov/uscode/title17/title17.html>).