

**Kern Community College District  
Administrative Procedures  
Chapter 3 – General Institution**

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**AP 3750                      Use of Copyrighted Material**

**References:**

Education Code Sections 32360 and 67302;  
U. S. Code Title 17, Copyright Act of 1976

**Note:** This procedure is **legally advised**.

A number of associations provide excellent resources related to use of copyrighted materials. Please see the following websites for information that expands on the general checklists in this procedure, which may be used to develop and refine local practice. The booklets, “Questions and Answers on Copyright for the Campus Community” and “Guidelines for Campus Copying” are available on the first three websites and are excellent resources.

1. The Association of American Publishers, [www.publishers.org](http://www.publishers.org), click on “conferences and publications”.
2. National Association of College Stores, [www.nacs.org](http://www.nacs.org), click on “industry information”  
Software and Information Industry Association, [www.siiia.net](http://www.siiia.net), click on “bookstore”
3. Copyright Clearance Center, [www.copyright.com](http://www.copyright.com)
4. American Libraries Association, [www.ala.org](http://www.ala.org), click on “Washington Office” or “issues and advocacy”

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."

#### I. Single Copying for Teachers

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

- A. A chapter from a book
- B. An article from a periodical or newspaper
- C. A short story, short essay or short poem, whether or not from a collective work
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

#### II. 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:

- A. The copying meets the tests of brevity and spontaneity as defined below; and
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright

### Definitions

#### Brevity:

- i. 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.
- ii. 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 "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
- iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv. "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 "i" 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:

- i. The copying is at the instance and inspiration of the individual teacher; and

- ii. 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:**

- i. The copying of the material is for only one course in the school in which the copies are made.
  - ii. 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.
  - iii. 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.)
- III. Prohibitions

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

- A. 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.
- B. 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.
- C. Copying shall not:
- D.
  - i. substitute for the purchase of books, publisher's reprints or periodicals
  - ii. be directed by higher authority
  - iii. be repeated with respect to the same item by the same teacher from term to term.
- E. No charge shall be made to the student beyond the actual cost of the photocopying.

### **Compilations**

#### **References:**

Basic Books, Inc. v. Kinko's Graphics Corp. (S.D.N.Y. 1991) 758 F.Supp. 1522; and 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.

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### **Online Courses**

#### **References:**

The TEACH (Technology, Education and Copyright Harmonization) Act;  
U.S. 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.