

<b>ADMINISTRATIVE DIVISION</b> ACAF Academic Affairs		<b>POLICY NUMBER</b> ACAF 1.35
<b>POLICY TITLE</b> Copyright		
<b>SCOPE</b> USC System	<b>DATE OF REVISION</b> June 3, 2021	
<b>RESPONSIBLE OFFICER</b> Executive Vice President for Academic Affairs and Provost	<b>ADMINISTRATIVE OFFICE</b> Office of the Provost	

**PURPOSE**

This policy addresses the rights to, interests in, protection and transfer of copyrighted works created by University of South Carolina faculty, instructors, staff, and students. In accordance with academic tradition, it generally provides that faculty will typically hold the copyrights to academic works they create within the scope of their employment, subject to the terms and conditions of this policy.

**DEFINITIONS**

**Academic Works:** Works authored by faculty within the scope of their employment arising from their teaching, research, or scholarship. Examples of academic works include but are not limited to course materials, lecture notes, textbooks, musical compositions and recordings, scholarly papers, poems, sculpture, and other artistic creations, regardless of the medium in which academic works are fixed or disseminated.

**Deliverables:** Copyrighted works authored and delivered in accordance with a sponsored contract or grant.

**Directed Works:** Works created pursuant to a written agreement between the university and faculty, staff or students who is/are the author(s) of the works and based on a specific request by the university.

**Employee:** Any person having an employment relationship with the university, regardless of the appointment type (e.g. classified, unclassified, full-time, part-time, temporary, student, intern).

**Faculty:** All employees who hold a tenure-track or professional-track title as defined by policy [ACAF 1.06 Academic Titles for Faculty and Unclassified Academic Staff Positions](#).

**Institutional Works:** Works that are supported by a specific allocation of university funds or are created at the specific direction of the university for a specific university purpose; “institutional works” also means works that result from simultaneous or sequential contributions over time by multiple faculty, staff and/or students. However, the mere fact that multiple individuals have contributed to the creation of a work does not necessarily cause the work to be an Institutional Work.

**Sponsored or Contracted Works:** Works developed using funds supplied under a sponsored contract or grant.

**Student:** A person who is currently enrolled at the university, or who is accepted for admission or readmission to the university, or who has been enrolled at the university in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows, or who is attending an educational program sponsored by the university while that person is on campus, or who engaged in prohibited conduct at a time when the individual met the above criteria. Individuals who are not currently enrolled at the university remain subject to the disciplinary process for conduct that occurred while they were enrolled.

**Works Made for Hire:** Includes (1) works prepared by employees within the scope of their employment; or (2) works specially ordered or commissioned for use as a contribution to a collective work, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. 17 U.S.C. § 101.

**Works Subject to Patent Protection:** For purposes of this policy, works that are subject to protection under both copyright law and patent law.

## **POLICY STATEMENT**

A. **Academic Works:** Under U.S. copyright law the university would hold the copyright to works authored by its employees who create works within the scope of their employment, as “works made for hire.” In deference to academic tradition, however, the university hereby transfers any copyrights it holds in academic works to the faculty authors who create copyrighted works within the scope of their employment, subject to the terms and conditions of this policy. The policy is intended to encourage and reward research and scholarship that results in the creation of copyrighted works, and to recognize the rights and interests of the author(s) or creator(s), any external sponsor(s), and the university.

1. While the university transfers copyright ownership of academic works as described above, faculty who create academic works for teaching purposes grant to the university a non-exclusive, non-transferable, royalty-free license to use, display, copy and perform the academic works only for the specific course and during the specific semester or other period of academic instruction for which the academic work was prepared. The university may also preserve, archive, and host academic works in its institutional repositories and learning management systems provided that faculty are able to control the timing and scope of use of and access to their academic works.
2. **Exceptions:** The university holds and does not transfer its copyright in academic works (1) that are deliverables under a sponsored contract or grant, unless the contract or grant provides that the faculty author(s) shall hold the copyrights to the deliverables; or (2) that are specifically commissioned by the university or are created as part of an administrative assignment for or on behalf of the university; or (3) that are software under university policy, unless the faculty author(s) hold the copyrights to the software pursuant to

university policy; (4) that are or have been transferred to the university in writing; or (5) if a transfer would cause the university to breach a contract or violate a law.

- B. **Directed Works:** The university holds the copyrights to directed works unless a written agreement between the university and the author provides that the author(s) hold(s) the copyright to the Directed Work. A written agreement for any directed work must be entered in advance of its creation.
- C. **Institutional Works:** The university holds the copyrights to institutional works. If faculty contribute works to a course that is offered on a regular basis by an academic unit, with the expectation and understanding that the university will regularly offer the course but that it will be taught by various instructors who share and/or reuse a common set of materials, then the works may be considered part of an institutional work. However, materials prepared by a faculty member for such a course and intended to be used exclusively by that faculty member in a specific iteration of the course shall be academic works.
- D. **Sponsored or Contracted Works:** The terms and conditions of the applicable contract or grant shall govern copyright ownership of any deliverables or other copyrighted materials that result from the contract or grant.
- E. **Student Works:** Students hold the copyrights in works they author, unless they author works as employees or otherwise transfer their copyright to the university or other entity. Notwithstanding the foregoing, if a student work is also a sponsored or contracted work or a deliverable, then the terms of the contract or grant governs copyright ownership. Further, copyright in academic works authored by a faculty member with assistance from a student shall be held by the faculty member, unless a written agreement between the faculty member and the student provides otherwise.
- F. **Works Made for Hire:** The university holds the copyrights to works made for hire, with the exception of academic works as provided in this policy.
- G. **Works Subject to Patent Protection:** If the university owns the intellectual property rights to a work subject to patent protection under the terms of policy [ACAF 1.33 Intellectual Property](#), then the author(s)/creator(s) must as a condition of employment assign any corresponding copyrights to the university. Copyrights in Works Subject to Patent Protection for which the university does not own the intellectual property rights to the work under the terms of policy [ACAF 1.33 Intellectual Property](#) shall generally belong to the author(s) of such works.
- H. **Guidance on Use of Materials Copyrighted by Third Parties:** The university is committed to complying with all applicable laws regarding copyrights. Except as allowed by law, including the law of fair use, it is a violation of this policy and of law for university instructors, staff, or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound or video recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner, unless such use can properly be classified as “fair use.”

## 1. Fair Use

Under United States copyright law, the “fair use doctrine” allows certain specified uses of a copyrighted work without requiring prior permission of the copyright holder under certain situations. As an institution devoted to the creation, discovery and dissemination of knowledge, the university supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 U.S. Code § 107, by instructors, staff, and students in teaching, research, and service activities.

### a. Elements of Fair Use

University instructors, staff, or students who propose to make fair use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a fair use analysis. These factors are:

- i. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit education purposes;
- ii. The nature of the copyrighted work;
- iii. The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- iv. The effect of the use upon the potential market for a value of the copyright work.

### b. Making Fair Use Determinations

The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a particular use of a copyrighted work is fair. Each factor should be given careful consideration in analyzing any specific use. There is no magic formula; an arithmetic approach to the application of the four factors should not be used. Depending on the specific facts of a case, it is possible that even if three of the factors would tend to favor a fair use finding, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be considered fair.

For assistance in weighing the four fair use factors, faculty, staff, and students are encouraged to consult <http://guides.library.sc.edu/copyright/fairuse> for evaluation tools and additional resources.

## 2. Educational Use Guidelines

### a. Use of Copyrighted Works in In-Person Classes

A provision of federal copyright law, 17 U.S. Code § 110(1), provides that the performance or display of a copyrighted work—except knowingly showing an illegally duplicated film—by instructors or pupils in the course of face-to-face instructional activities of a nonprofit educational institution *in a classroom or similar physical location*, is not infringement. The exemption applies to display of a work by means of any sort of projection device or process, but only as long as there is no transmission beyond the place where the class is occurring.

This allows for the use and display of films, art, literary works and other copyright works in in-person classes. It does not provide a copyright exemption if the class containing the copyrighted work is webcast or otherwise transmitted outside of the physical location where the class is being held, either synchronously or asynchronously.

b. Use of Copyrighted Works in Remote (including Online) Classes

Another provision of the law, 17 U.S. Code § 110(2) (known as the “TEACH Act”), applies to use or display of copyrighted material in classes that are transmitted either synchronously or asynchronously via webcast or other means. Such displays are not infringement as long as the following conditions are met:

- i. “the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities;”
- ii. “the performance or display is directly related and of material assistance to the teaching content of the transmission;”
- iii. the transmission is made solely for and reception is limited to “students officially enrolled in the course for which the transmission is made” or “officers or employees of governmental bodies as a part of their official duties or employment;” AND
- iv. the transmitting body or institution does the following:
  - provides materials and has in place policies that promote compliance with the copyright laws,
  - provides notice that the materials used in the course may be protected by copyright,
  - applies measures that prevent recipients from retaining the transmission past the end of the class session or further distributing the work, and
  - does not attempt to interfere with the copyright owner’s protection of the work.

c. Use of Copyrighted Works as Reading and Reference Material

In 1976, the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, the Authors League of America, Inc., and the Association of American Publishers, Inc. approved guidelines on classroom use of copyrighted books

and periodicals. It is not intended to apply to musical or audiovisual works. These guidelines do not have the force of law, but may be used by courts to determine whether use in an educational context is fair use. The guidelines provide, in part, the following:

d. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her 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, drawing, cartoon or picture from a book, periodical, or newspaper

e. 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 meets the tests of brevity and spontaneity as defined below and,
- ii. Meets the cumulative effect test as defined below and,
- iii. Each copy includes a notice of copyright

The complete guidelines, including the definitions of brevity and spontaneity, are published in U.S. Copyright Office Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, available at <https://www.copyright.gov/circs/circ21.pdf>.

## PROCEDURES

- A. There many other issues surrounding copyright besides fair use and recommends that individuals with copyright questions consult <http://guides.library.sc.edu/copyright>. This site provides links to online resources that can serve as guides through many copyright issues. In addition, the committee has developed a set of [frequently asked questions](#).

Neither the information in this policy nor the contents of the websites referenced here constitute legal advice. This guidance was current as of the date of revision. Instructors, staff, or students who require additional assistance with copyright questions are encouraged to consult the Office of General Counsel.

- B. In the occasional circumstances when the author of a work must have an agreement on copyright ownership and license to address considerations not described in this policy, the author or the work must enter a written agreement with the university. These agreements must be processed through the [Technology Commercialization Office](#).
- C. Any university faculty, staff, or student may seek resolution of a dispute regarding ownership of copyright to a work governed by this policy by filing a written request for resolution with the respective chief academic officer. The chief academic officer will refer such requests to the chair of the appropriate faculty committee or administrative unit, and they will promptly hear the dispute and recommend a decision in writing to the chief academic officer. The chief academic officer will not be bound by that recommendation and must render a written decision within thirty (30) business days of receipt of the Committee’s recommendation. If not satisfied with the decision, the individual seeking resolution can appeal that decision through normal university processes, including the faculty grievance process if the grievant is a faculty member.

**RELATED UNIVERSITY, STATE AND FEDERAL POLICIES**

- [ACAF 1.33 Intellectual Property](#)
- [USC Columbia Faculty Manual](#)
- [17 U.S. Code § 102, et. seq.](#)

**HISTORY OF REVISIONS**

<b>DATE OF REVISION</b>	<b>REASON FOR REVISION</b>
June 3, 2021	New policy