



Library and Media Services Operational Policy and Procedures

Fair Use of Copyrighted Works for Education and Research Statement of Supporting Principles

This document explains the underlying principles of this policy, and it will answer some common questions about it. Please note, however, that this document is not intended to be a tutorial about copyright and fair use. Preparing and disseminating such materials is an important part of implementing the policy.

- **Principle 1: An appropriate exercise of fair use depends on a case-by-case application and balancing of four factors as set forth in a statute enacted by Congress.** A proper determination of fair use-in daily practice and in the courts- requires applying these four factors to the specific circumstances of the use: the purpose or character of the use; the nature of the copyrighted work being used; the amount and substantiality of the work being used; and the effect of the use on the market for or value of the original. These factors must be evaluated to determine whether most of them weigh in favor of or against fair use.
- **Principle 2: Nonprofit educational purposes are generally favored in the application of the four factors, and a robust concept of fair use is crucial for advancing education and research.** The educational purpose will usually weigh the first factor strongly in favor of fair use. Keep in mind, however, that a nonprofit educational purpose does not by itself make the use "fair." One must always consider and weigh all four factors together.
- **Principle 3: Responsible decision making means that individuals within the university must know the fundamentals of fair use and understand how to apply them in typical situations.** To that end, the Copyright Management Center and other offices will provide information, answer questions, and conduct seminars in an effort to prepare Pierce College faculty, staff, and librarians to resolve fair-use questions in a good-faith and well-informed manner.
- **Principle 4: The college is confident that its faculty, staff, and librarians are able to make good-faith decisions about fair use, and that their decisions will best reflect the particular circumstances relevant to the decision.** Fair use depends on the facts and circumstances of the given situation. Therefore, the person closest to those facts is likely best suited to determine the law's application. The proposed policy consequently does not mandate a particular

decision, but instead calls on each member of the college to be responsible for the fair-use determinations with respect to the projects within their authority.

- **Principle 5: Reasonable people-including judges and legislators-can and will differ in their understanding of fair use.** Copyright law rarely offers a definitive meaning of fair use for any specific application. Thus, the real meaning of fair use depends on a reasoned and responsible application of the four factors. One person's judgment and situation may not match the next, and the differences may be based on variations in facts and circumstances.
- **Principle 6: Because of the flexible and interpretive nature of fair use, Congress provided significant protection for educators.** Not only does the law apply particularly to educational purposes, but it also limits the monetary liability that educators may potentially face, as long as they hold a reasonable and good-faith belief that their activities are fair use in light of the four factors.
- **Principle 7: Through educational efforts, the college should move over time toward common understandings of fair use for local needs, but such detailed interpretations ought not be part of a formal policy statement.** By keeping the policy itself concise, the college preserves the flexibility inherent in fair-use law and preserves the opportunity to respond to a changing law and the changing demands of education and research.
- **Principle 8: Fair use is not determined by "guidelines" that purport to quantify the boundaries of fair use.** In an attempt to clarify the meaning of fair use for common situations, various private parties have negotiated "guidelines," but those externally developed guidelines are often inappropriate for the realistic application of fair use to higher education. Such guidelines are too often an unduly narrow or rigid definition of fair use, and they usually impose additional restrictions and conditions that are not part of the law. No such guideline has been read into the law by Congress or the courts, and the guidelines are not binding. Fair use must be determined according to the circumstances of each situation.
- **Principle 9: If a member of the Pierce College community acts in good faith and consistent with his or her college duties, the Pierce College indemnification policy can offer protection in the event of an infringement allegation.** Good faith increases the likelihood that activities are in fact fair use. Good faith reduces the risks of liability in the event of infringement. Good faith is also important for securing the benefit of college assistance and support in the event that its faculty, staff, and librarians may face infringement allegations, in accordance with the Officers Liability Insurance resolution, dated May 22, 1971. Ultimately, good faith is best manifested through knowledge of, and reasonable application of, the four factors.

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