

**Accessible Education Forum:**  
**Summary of Principles of Action for the Use of Works**  
**for Teaching and Research Purposes**

**Code of Best Practice**

1. **Introduction**

- 1.1 “Fair Use” is a legal principle that allows for balance between the need to protect copyrights, on the one hand, and users’ rights on the other. The use of works for various academic requirements is different in nature from any other use of works, whether commercial or other, since it is critical to academic activity. Academic activity is vital to an enlightened and cultured society and training new researchers and creators. Accordingly, the use of works to this end serves the objective of copyright laws.
- 1.2 Section 19 of the Copyright Law 5768-2007 (hereinafter: “**the Copyright Law**”) provides solely a framework for testing the circumstances wherein use will be deemed fair. Users’ rights secured in section 19 of the Copyright Law do not constitute a closed list. Users’ rights cannot be specified in a detailed accurate list. It is necessary to grant flexible construal to the principle of fair use in a manner that reflects the particular requirements of academe in Israel – and this is the objective of the forum.
- 1.3 **In the absence of a leading case in Israel pertaining to the application of the fair use rule in connection with the use of works for purposes of teaching and research, the principles of construal following herein below reflect the customary position among the academic community pertaining to the rules of permissibility and prohibition regarding the use of works in the context of academic activity.**

2. **Objective of Use**

The starting point for the application of section 19 is that use for purposes of teaching and research is permitted, unless the various considerations specified herein below clearly tip the scales toward the preclusion of such use.

**Considerations in support of fair use**

- 2.1 **Non-commercial use** – Non-commercial use necessarily supports fair use and accordingly is permitted. Institutions of higher education operate for non-profit objectives. Charging tuition in of itself does not turn the institution’s activities into commercial activity. Similarly, even if the results of research are ultimately commercialized, the research still constituted academic research initially.
- 2.2 **Transformative use** – Transformative use, for example, is use that alters the work being used by way of the addition of a phrase, a new meaning

or new message; or the use of a work in a manner that is different or for a different objective or function from the original work.

- 2.3 Use that it would be reasonable to assume that the owner of the rights would not object thereto – Examples of uses that it is reasonable that the owner of the rights would not object thereto would be taking a part of the work, which, although essential, is negligible. Another example is the use of a work in a manner that is consistent with the purpose of the production thereof, such as academic research, which, by nature, is intended to be disseminated among the academic community.
- 2.4 The nature of the work used, supports fair use  
Regarding works, which depict facts, processes, data or present scientific research findings - which by themselves are not protected by copyright – the extent of permissible use will be broader, provided that the work is not a textbook.
- 2.5 Works of an academic character composed by researchers or lecturers in an institution of higher education or a similar academic institution outside of Israel.
- 2.6 Works that have no available electronic access thereto, such as in databases, electronic journals, or by way of the commercial distribution of electronic books.
- 2.7 Works that have been sold out on the market and are reasonably unattainable.
- 2.8 Works that reasonably and ordinarily are not purchased as textbooks by students of institutions of higher education.
- 2.9 Quality and quantity of the extent of use in relation to the work in its entirety – **Use must be proportional in relation to that which is required for teaching or research purposes. The test to be applied is whether the quantity copied is necessary reasonably to realize the objective of teaching or whether a smaller quantity would be sufficient to achieve this objective.**
- 2.10 Effect of use on the value of the work and the potential market thereof
  - 2.10.1 Creating copies of a work, **which do not constitute a replacement** for the original work, will generally constitute fair use, since such use does not damage the market of the original work. In addition, the extent of damage must be tested; for example, a light and minor offence will support the permissibility of use.
  - 2.10.2 When determining the existence of a potential market for a work, the legitimate expectations of the owner of the rights to the work must be assessed as well as whether the use of the work for teaching and research falls within the context of the potential

market he anticipated, or not. For example, use for teaching purposes of materials from a textbook affects the potential market of the work (the textbook) and, therefore, should be most limited. In this context, technological restriction of a class of users, for example limiting use solely to students of a course while the course is being given, can ensure that solely those who are permitted to make fair use will gain access to the work, and the use of the work will not damage additional markets beyond the teaching and research framework in academic institutions.

#### 2.11 Credit – Indicating the Name of the creator of the work

When using a work or part thereof, one must make certain to give credit to the creator of the work, unless the matter is unreasonable in the circumstances of the case (for example, when use is made spontaneously and unexpectedly, it is unreasonable to clarify who is the creator of the work, etc.).

### 3. Principles of action the Forum has formulated pertaining to the provision of accessibility by digital means to works for teaching purposes on courses' websites:

- 3.1 **Description of use** – Technologies providing accessibility: the Internet, personal computers, media players, cellular telephones (hereinafter: “**Digitally Saved Files**”). Providing digital accessibility is implemented for teaching purposes and is vital to satisfying the requirements of teaching and learning in the 21<sup>st</sup> century.
- 3.2 **The rule** – Making learning materials accessible by means of digitally saved files is permissible when the lecturer requires such to teach a course and when this is implemented to the extent and degree required for teaching purposes.
- 3.3 In order to ensure compliance with the rule, the lecturer shall sign a declaration to the effect:
  - 3.3.1 All materials included in the digitally saved files are required for the purpose of teaching the course.
  - 3.3.2 At the time of uploading the copyrighted materials into digitally saved files, the principles specified herein in this document shall be applied, particularly those in section 2.9 herein above and those in sections 3.5 and 3.6 (including their sub sections) herein below.
- 3.4 The institution shall appoint an entity to evaluate the permit for use of the protected material (hereinafter: “**the Authorized Entity**”). In cases where the Principles of action, as provided in this document, do not produce, in the lecturer’s opinion, a clear conclusion, the decision shall be transferred to the authorized entity, who shall use discretion in accordance with the policy of the institution.

3.5 The decision whether the use of works can be defined as **fair use** requires testing the following cumulative conditions herein below:

3.5.1 The work is required by the lecturer for the purpose of the course being taught at the institution (based on his declaration that the works are required for the purpose of teaching the course – section 3.3 above).

3.5.2 No free access to the work is duly available in sources open to study by the public on the Internet.

3.5.3 The work shall be made accessible solely to students registered to the course and the academic and administrative staff in the institution, and solely for the term of studies and exams.

3.5.4 The institution's library has lawful access to at least one copy of the book from which the work was taken.

3.6 **Extent of use:** The extent of use described herein below is the minimal extent permitted and is intended to serve "as a rule of thumb" for the prompt identification of permitted uses at first sight. In many cases, broader use than that stated herein below may constitute fair use. The decision in such a case requires the use of discretion in accordance with the entirety of the aforesaid considerations and, if necessary, the matter shall be decided by the Authorized Entity of the institution.

3.6.1 Use of **one-fifth** of a book constitutes fair use. The test is not solely quantitative but also qualitative. Without derogating from the right to scan an entire book in accordance with the provisions of section 30 (a) of the Copyright Law, it is permissible to also scan an entire book, a copy whereof is not found in the library's collection, if the book is out of print.

3.6.2 Use of an article, in its entirety, from a periodical or a book that comprises a collection of articles, constitutes fair use. In the event that provision of accessibility is required for several articles from the same issue, newspaper edition, or volume of a periodical or from a book that constitutes an anthology of articles for the same course, fair use must be tested while taking note of the entirety of the aforesaid considerations.

3.6.3 Use of a work in its entirety that cannot be divided (such as a picture, photocopy, table, diagram or poem) constitutes fair use.

3.6.4 Other uses, apart from the extent described above or that fail to fulfill the conditions indicated above, in many cases will constitute fair use but require the use of discretion pertaining to the entirety of the criteria.