

Fingernails on the Bb



Is it Fair Use?

Fingernails on the Blackboard: is it Fair Use?

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Is it Fair Use?

Identification of Copyright Support Issues

- Limited legal counsel support from the UM System.
- IS noting potential copyright abuse in Blackboard materials.
- Library noting a decrease in online reserve submissions.
- Expansion of online courses and lack of understanding about the TEACH act.
- Linking to online resources.
- Faculty posting materials on open Web sites.
- Questions about fair use of media materials.
- Inconsistent policies, procedures, and forms for copyright compliance across the university.
- No recognized campus expertise.
- Difficulty in reaching out to all faculty in 11 schools and on 2 campuses.

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Is it Fair Use?

Copyright Support Team

7 librarians from University Libraries and Law Library.

- Provide **educational and training opportunities** for faculty to better understand fair use and copyright compliance, particularly as it pertains to the use of copyrighted material for classroom instruction
- Provide **expertise on campus regarding fair use and copyright** to provide general guidance for faculty, including guidance on when to consult with the university's legal counsel. **No legal advice given.**
- Provide a communication structure for faculty to use to ask questions and receive **updates on issues or new developments**
- Provide **online resources** and other documentation for faculty and students to consult

Members share questions on email received individually before crafting a response. Turn around time is rapid.

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Is it Fair Use?

Your Copyright Resources

- UMKC Copyright Web Page:
<http://library.umkc.edu/copyright>
- Email the Copyright Support Team:
UMKCCopyright@umkc.edu

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Is it Fair Use?

Posting Material in Blackboard

- Can I post this article in Blackboard or Moodle?
- What if I used it last year?
- Is it too long?
- How much will it cost?
- But I don't own it!
- Can I put it on reserve at the library?

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Is it Fair Use?

Let us Help

- The Libraries will:
 - work with you to determine any issues that might be associated with your specific request
 - cover up to \$100 in licensing fees if they are required
 - do the work of uploading a document to your course website
 - help you find alternate sources
 - figure out how to get the right durable URL

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Is it Fair Use?

Resources and Contact Information

- Guidelines for placing print materials on eReserve:

<http://library.umkc.edu/eres-guidelines>

- Forms and contact information

[Miller Nichols Library Form](#)

[Health Sciences Library Form](#)

[Dental Library Contact Information](#)

- Information on physical reserves:

<http://library.umkc.edu/form/mnlreserve>

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Is it Fair Use?

Linking to Licensed Resources

- Libraries subscribe to resources with articles, films, music, and more
- Always best to link to these resources from Blackboard, rather than just embedded them into your course site
 - Usage statistics
 - License agreements
- Does the license trump Fair Use? (maybe)
- We can help you find the link

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Is it Fair Use?

LibGuides



Flow Chart of
Issues

UMKC LIBRARIES
University of Missouri Kansas City

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Welcome

Copyright[©]

Let's copy it right

A Guide to Copyright for UMKC Educators and Students

Nothing on this guide is to be construed as legal advice.
These pages are intended to provide information and guidance in the application of copyright law and
to expand on the University of Missouri System Collected Rules and Regulations.

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View this page in a format suitable for printers and screen-readers or mobile devices.

<http://libguides.library.umkc.edu/copyright>

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Is it Fair Use?

Fair Use



More on Fair Use

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Fair Use **Fair Use Test**

Fair Use is an exemption to the rights of copyright holders.

[FAQs](#)

The Four Factors

"Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair," such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair. See the Columbia University checklist (Crews and Buttlar) (right corner) to see how to apply these factors.

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work; (fiction/creative or nonfiction/factual)
3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

[Fair Use Checklist](#)
(Crews & Buttlar)
[Comments \(0\)](#)

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Is it Fair Use?

Classroom Guidelines



More on
Guidelines



Classroom
Guidelines

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Classroom Guidelines

Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals

The House Judiciary Subcommittee realized in 1975 that there would be many questions surrounding fair use in educational situations. Classroom guidelines were discussed over a ten year period between 1967 and 1975. The final version was agreed upon by a group of teachers, the NEA and publishers. The Guidelines focus specifically on photocopying of books and periodicals for use in classroom settings. These Guidelines are "meant to state the minimum and not the maximum standards." "They are not intended to limit the types of copying permitted under the standards of fair use." (Copyright Office Circular 21)

Classroom Guidelines (for face-to-face teaching)

I. 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:

A. A chapter from a book:



Fair Use, University Regulations & the Guidelines for Classroom Copying



University of Missouri System

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ABOUT

CURATORS

PRESIDENT

DEPARTMENTS

NEWS

PUBLIC NOTICES

RESOURCES

While not a law, these "Guidelines for Classroom Copying" have been an accepted standard for higher education for several years. The University of Missouri will continue to use them as the standard at this time, and sets them out in their entirety as follows

1. **Single copies for teachers** -- For teaching, including preparation, and for scholarly research, a faculty or staff member may make, or have made, a single copy of:
 - a. a chapter from a book;
 - b. an article from a journal, 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.
2. **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

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Is it Fair Use?

Classroom Guidelines

- Many universities no longer use.
 - Duke
<http://library.duke.edu/about/depts/scholcomm/copyright-and-fair-use.pdf>
 - University of California ◆◆◆
<http://www.universityofcalifornia.edu/copyright/fair-use.html>
 - Georgia State <http://www.usg.edu/copyright>
- Plaintiffs seek to enforce in Georgia State Case.
- See also [ALA Copyright Articles, Daniel Lee, Fair Use and Guidelines, ALA.](#)



Duke Policy



UC Policy



Georgia State
Policy

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Is it Fair Use?

Georgia State - Impact desired by plaintiff

- *Proposed injunction*
 - Define fair use by Classroom Copying Guidelines
 - Lesser of 10% or 1000 words
 - Limit fair use in any case to only 10% of course readings
 - 90% must be purchased by students or licensed
 - Student copyright fee?
 - How would Annual Campus License work?
 - Give publishers access to LMS sites

Kevin Smith, Duke University, Office of Scholarly Communications – see blog at <http://blogs.library.duke.edu/scholcomm/>





Fair Use Checklists



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Fair Use

Fair Use is an exemption to the rights of copyright holders.

[FAQs](#)

The Four Factors

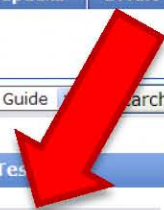
"Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair," such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair. See the Columbia University checklist (Crews and Buttler) (right corner) to see how to apply these factors.

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work; (fiction/creative or nonfiction/factual)
3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

Fair Use Test

[Fair Use Checklist](#)
(Crews & Buttler)

[Comments \(0\)](#)



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Best Practices

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Best Practices

- [Best Practice Guidelines for Digital Collections](#)
Office of Digital Collections and Research
University of Maryland
- [Code of Best Practice for Online Video](#)
- [Code of Best Practices in Fair Use for Academic and Research Libraries](#)
Association of Research Libraries in conjunction with the Center for Social Media at American University. The project is being conducted between 2010-2013. To be released in early 2012.
- [Code of Best Practices in Fair Use for Media Literacy Education](#)
Center for Social Media
- [Code of Best Practices in Fair Use for Poetry](#)
Center for Social Media
- [Documentary Filmmakers Statement of Best Practices in Fair Use](#)
Center for Social Media
- [Society for Media Studies in Teaching for Film and Media Educators](#)
Center for Social Media
- [Statement of Best Practices in Fair Use of Dance Related Materials](#)
Dance Heritage Coalition

Business & Public Administration Librarian

Chris Le Beau, M.B.A., M.L.S.

checking lebeau's status

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Is it Fair Use?

Streaming Situations

- A film you made
- Library copyrighted licensed resource
- A copyrighted licensed resource;
- Copyrighted commercial film or product
- Copyrighted commercial product through a third party vendor
- Copyrighted noncommercial amateur product

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Is it Fair Use?

Determining If Your Use is Permitted

- Is the work licensed by the University in which case the copyright is covered for you? **Yes, then use it**
- If not then, is there a legal exemption to copyright law that would allow you to use the work? **Yes, then use it**
- If not then, does it pass a Fair Use analysis? **Yes, then use it.**
- If none of the above permits use, then seek permission. **Then use it.**

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Is it Fair Use?

Streaming in Content Management Systems is covered by either:

FAIR USE

Or

TEACH Act

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Is it Fair Use?

FAIR USE

- Applies to any situation, any media
- Vaguer
- No firm boundaries
- Riskier

TEACH Act

- Applies only to **performance** and **display** instances
- Specific
- Definite boundaries
- More obligations for teachers/institution
- Safer

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Is it Fair Use?

Fair Use (Section 107)

Fair uses: criticism, comment, news reporting, teaching, scholarship, and research

- **Purpose:**
nonprofit, educational or commercial?
- **Nature:**
creative or factual?
- **Amount**
 - *portion or entirety?*
- **Market Effect**
 - *would there be market harm for the copyright holder?*

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Is it Fair Use?

TEACH Act

- Show the full performance of a *nondramatic* literary or musical work or *display* the following :
 - a sound recording of a poem, piece of literature
 - a recorded symphony
 - still images, photographs (considered *displays*)
 - still images from subscription databases if allowed by license
- Show “reasonable and limited portions of any other work [dramatic works], or *display* of a work in an amount comparable to that which is typically displayed in the course of a live classroom session.”
 - musicals
 - operas
 - commercial film
 - music videos

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Is it Fair Use?

What is a dramatic work?

Fundamentally there seem to be but two essential elements for a **dramatic** composition: (1) that it relate a **story**, and (2) that it provide directions whereby a substantial portion of the story may be visually or audibly **represented** to an audience **as actually occurring, rather than merely being narrated or described.**

1-2 Nimmer on Copyright § 2.06

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Is it Fair Use?

TEACH Act

- Works "produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks" should not be copied, but purchased and used as intended by the publisher.

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Is it Fair Use?

TEACH Act Obligations for Faculty

- The performance or display is made by or under the supervision of an instructor
- The performance or display is “an integral part of a class session” “directly related and of material assistance to the teaching content”
- The work is part of “systematic mediated instructional activities”
- The “transmission is made solely for and limited to students officially enrolled in the course.”
- Materials that are used for performance or display must be “lawfully made and acquired”
- Instructor must use reasonable controls to prevent copying and retention of the work, those that would “discourage most users.” (streaming is considered more secure)

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Is it Fair Use?

Can You Digitize an Analog Copy?

A digital copy may be made from an analog copy (Sect 112(f)):

- when “no digital version is available to the institution” or when the only digital version is technologically protected.
- the digitized copy is retained by the institution
- if it is used only for teaching under Section 110(2) criteria
- if no one circumvents technological protection measures to make the digital copy
- Include a Notice:
 - *This performance is copyrighted material permitted for use under the TEACH Act.*

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Is it Fair Use?

TEACH Act

Institutional Requirements

- Must be an accredited, non-profit, educational institution or governmental body.
- Institution "institutes policies regarding copyright, provides informational materials to faculty, students, ...that accurately describe, and promote compliance with, the laws of the U.S..."
- "The institution applies technological measures that reasonably prevent retention of the work"

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Is it Fair Use?

UMKC IS Streaming Service

The best way to transmit media in Blackboard in order to be in compliance with the TEACH Act is with the use of streaming.

UMKC Information Services has two streaming servers.

Windows Media Server

Flash Interactive Media Server

See [UMKC IS website](#) or contact its@umkc.edu

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Is it Fair Use?

Should You Use Third Party Streaming Services?

- **Films on Demand** (library licensed service)
 - **YouTube** (free-for-all)
 - **Netflix** (personal subscription service with a license)
 - **Television websites**
-
- *Look at the Terms of Use especially clauses labeled “Restrictions on Use,” “Limitations on Use.” Look for words like “perform,” “performance,” and “display.”*

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Is it Fair Use?

Films on Demand

- Library Licensed Resource – ok to stream
- *Example: Mark Twain: Part I (Ken Burns)*

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Is it Fair Use?

YouTube's Terms

“You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).”

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Is it Fair Use?

YouTube's Terms

- “You agree not to access Content through any technology or means other than the video playback pages of the Service itself, the Embeddable Player, or other explicitly authorized means YouTube may designate.”
- Good idea #1: *Don't show YouTube videos with infringing material*
- Good idea #2: *It's fun to embed, it's safest to link.*

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Is it Fair Use?

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Is it Fair Use?

YouTube: Evian Babies

- YouTube [Link](#) to Evian Roller Babies US
- YouTube [Link](#) to mashup of
 - HP commercial and Evian Babies, song from Melanie
(is this YouTube a Fair Use of copyrighted material?)
- While amateur video artists can circumvent “motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment,” this mashup would not meet this test on several scores. (2010 Rulemaking – Copyright Office)
- It is advisable not to show infringing YouTube in class.

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Is it Fair Use?

Netflix DVD Terms

- “Our unlimited DVD plans do not include access to streaming. If you wish to access Netflix's streaming service, you must subscribe to the Netflix unlimited streaming plan. These DVD Terms and Conditions constitute a part of the Netflix Terms of Use and govern your use of our DVD rental service.”

<https://signup.netflix.com/DVDTerms>

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Is it Fair Use?

Netflix statement and reaction

- “But as more librarians sign up for its popular mail and streaming-video services, Netflix says library distribution of rented DVD’s or streaming video violates its terms of use.”
- The company knows that its service is being used by librarians, but so far it has not taken legal action to stop them. “We just don’t want to be pursuing libraries,” Mr. Swasey said. “We appreciate libraries and we value them, but we expect that they follow the terms of agreement.”

–Chronicle of Higher Education, Sept. 18, 2010.

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Is it Fair Use?

Netflix

- “Although copyright law allows faculty members to use the material in the classroom, he said, they may be opening themselves up to legal action from the company.”

--Kevin Smith, Duke University Director of Scholarly Communications, and lawyer, *Chronicle of Higher Education*, Sept. 18, 2010.

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Is it Fair Use?

Netflix Terms

- “You may not download (other than through page caching necessary for personal use, or as otherwise expressly permitted by these Terms of Use), modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Netflix service, without our express written consent.”

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Is it Fair Use?

Alternative strategies

- Get permission
- Get public performance rights for full dramatic works from Rights Agency if necessary
- Show the movie in a F2F setting
- Have students get personal Netflix accounts
- Select a different performance
- Ultimately it's your decision

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Is it Fair Use?

DMCA 2009 provision for faculty

“Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

- Educational uses by college and university professors and by college and university film and media studies students
- documentary filmmakers
- noncommercial videos

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Is it Fair Use?

AIME v. UCLA

- Streaming case
- UCLA ripped DVDs in order to stream films in Content Management System
- However, UCLA license included public performance rights
- UCLA won

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Is it Fair Use?

AIME v. UCLA

AVP is the licensor and you, the user, are the Licensee.

- You hereby agree to the following Terms of Use:
 - I. Grant of License
AVP grants to the Licensee a limited, non-exclusive, revocable license to use the Content ... in an educational OR home video setting.
- CUSTOMER ACKNOWLEDGES THAT THE PROGRAMS MAY NOT BE DUPLICATED, BROADCAST, TRANSMITTED BY CABLE OR OTHERWISE, ON ANY MULTI-RECEIVER OPEN OR INTERNET SYSTEM, OR DISPLAYED BEFORE THE PUBLIC, WHETHER OR NOT ADMISSION IS CHARGED. CUSTOMER SHALL EXHIBIT THE PROGRAMS ONLY AS HEREIN SPECIFIED AND USE THE PROGRAMS FOR NO OTHER PURPOSE.
- Customer shall not sublicense, ... Performing rights to music contained in any Program are not granted herein. Nothing herein shall derogate from any rights of Ambrose or any other copyright proprietor of any Program under the United State Copyright Law or any applicable foreign copyright laws.

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Is it Fair Use?

AIME v UCLA

- As made clear by the court, a state law breach of contract claim based on the exercise of rights set forth in the copyright act, even if prohibited by the contract, would fail because of Copyright Act preemption. For example, if a contract tried to prohibit ILL, an activity authorized by the Copyright Act, that part of the contract would be pre-empted. If the signatory institution, public or private, exercised their ILL rights, a state law breach of contract claim should fail. The private institution might still be sued for infringement of the federal copyright statute itself, but not because it may or may not have complied with a license.

Peggy Hoon, JD

<http://www-apps.umuc.edu/blog/collectanea/2011/10/copyright-contract-or-complica.html>

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Is it Fair Use?

Music

- Subscription streaming resources available at UMKC for audio:
 - Naxos Music Library
 - Database of Recorded American Music
 - American Song
 - Smithsonian Global Sound
 - Naxos Music Library Jazz
- Easy to link to specific tracks!

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Is it Fair Use?

Music scores

- Subscription digital score content available as well through UMKC Libraries
 - LibraryMusic Source
 - Classical Scores Library

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Is it Fair Use?

More Music Scores

- Some projects putting scores online
 - Mozart from Internationalen Stiftung Mozarteum and Packard Humanities Institute
 - <http://dme.mozarteum.at>
 - IMSLP
 - Free internet resource—use at your own risk.
 - Mostly public domain works
 - <http://imslp.org/>

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Is it Fair Use?

Video

- In addition to resources listed earlier
 - Naxos Video Library
 - Opera in Video
 - Dance in Video
 - Theatre in Video
- Again, easy to link to specific segments!

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Is it Fair Use?

Music continued

- Music Library Association Copyright Website:

<http://copyright.musiclibraryassoc.org/>

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Is it Fair Use?

Music continued

- Be mindful that classroom use differs from performance use.
- Use the Fair Use checklist to document what you post on Blackboard.
- Be sure to keep your class “closed” and available only to enrollees.
- Ultimately up to professor.

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Is it Fair Use?

Questions?

- Don't forget, after this session, you can e-mail your questions to

UMKCCopyright@umkc.edu