



Off-Air Recording of Broadcast Programming for Educational Purposes

Responsible Officer:	Vice Provost - Academic Planning, Programs & Coordination
Responsible Office:	AC - Academic Planning, Programs & Coordination
Issuance Date:	9/24/1985
Effective Date:	9/24/1985
Scope:	This policy applies to all University of California campuses, offices, affiliates, and facilities, including Agriculture and Natural Resources, and is advisory to the Lawrence Berkeley Laboratory.

Contact:	Joanne Miller
Email:	joanne.miller@ucop.edu
Phone #:	(510) 587-6141

I. POLICY SUMMARY

The University of California Policy for Off-Air Recording of Broadcast Programming for Educational Purpose is issued to encourage legitimate educational use of off-air video recordings and to reduce the University's potential liability for copyright infringement. This policy is consistent both with the University's instructional and research requirements and with the intent of the October 1981 Federal Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes (see below).

II. DEFINITIONS

Broadcast Television Transmission (Broadcast Television Program) Any copyrighted television program transmitted (via radio frequency and/or cable) without charge to the general public by a licensed television station is subject to adherence by University staff and faculty to this policy. This does not include daily network newscasts, programs which are part of the public domain, or programs which are compelled to provide a license to non-profit educational institutions without fee, such as programs

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funded by California Public Broadcasting Commission (CPBC) contract or grant or funded by the CPBC/CCH (California Council for the Humanities) joint fund. On request and free of cost, the University of California will receive a blanket license for off-air recording and unlimited non-broadcast use of any program produced under a CPBC contract or grant and/or under a joint grant from the CPBC/CCH.

Fair Use The doctrine of fair use for copyrighted materials contained in 17 United States Code section 107, states:

Section 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Fair use excerpts of copyrighted materials do not require copyright owner permission or licensing to use. However, fair use segments of copyrighted materials recorded off-air will not be physically or electronically combined or merged to create a teaching anthology intended to be sold without first obtaining the proper permission from the copyright owner or his/her copyright licensing agent.

Forty-Five Calendar Day Retention Period The first forty-five consecutive calendar days after the date a television program is recorded off-air by the University. During this time the decision must be made whether to retain an off-air recording. Any off-air recording will be erased at the end of the forty-five days, if no request is made in writing to the policy implementing officer to keep it. If an off-air recording is required for instructional or research use beyond the first ten-consecutive-school-day period, a written explanation of the circumstances must be submitted to the policy implementation officer within the forty-five calendar day retention period.

Off-Air Recording Any recording via tape, disc or other media from a copyrighted broadcast television transmission, including simultaneous cable retransmission of a copyrighted television program.

Off-Air Recording Exhibition Location A classroom, place of instruction, library, archive, ITFS (Instructional Television Fixed Service) receive site, media center, and/or other location where off-air recorded programs will be viewed for educational purposes.

Officer Responsible for Implementing this Policy The person authorized by the Chancellor to implement the provisions of the "University of California Policy for Off-Air Recording of Broadcast Programming for Educational Purposes" at a University of California campus. For Universitywide offices and facilities not affiliated with a campus, this officer will be designated by the Senior Vice President--Administration.

Ten-Consecutive-School-Day-Period The first ten school days within the first forty-five calendar days following off-air recording of a broadcast television program. These school days do not include weekends, holidays, vacations, examination periods, or other scheduled interruptions. During this time, an off-air recording should be viewed by each faculty member requesting such use twice per class at most -- once for instructional purposes and once for instructional reinforcement purposes.

III. POLICY TEXT

In its use of off-air recordings of copyrighted broadcast television programs, the University of California will follow the Federal copyright law in Title 17, United States Code.

Definitions of key terms in the University Off-Air Recording Policy are incorporated into and should be interpreted as part of this policy.

IV. COMPLIANCE / RESPONSIBILITIES

University Policy Implementation

At each campus which records broadcast television programs off the air for educational use, the Chancellor shall designate a University officer to oversee implementation of this Policy. . The Provost shall designate a University officer to monitor implementation of this policy for the University and to be the implementing officer for University-wide offices and University facilities not affiliated with a campus which record off-air television broadcasts for educational use. Within this policy, these University officers are referred to as officers responsible for implementing the University Off-Air Recording Policy.

Each officer responsible for implementing this policy shall:

- inform his/her location's personnel of the provisions of the University Off-Air Recording Policy;

- perform clearinghouse functions to purchase or obtain licensing for use of off-air broadcast recordings beyond the initial free use period (if such additional use is requested);
- assure that University off-air recordings made between October 14, 1981 and the date of publication of the University of California Off-Air Recording Policy are brought into compliance with this policy; and
- assure that any Off-Air Recording Implementation Procedure developed by a University campus or facility complies with federal copyright law and the University Off-Air Policy.

V. PROCEDURES

A. Educational Use

University of California personnel may record off the air any copyrighted broadcast television transmission (including cable re-transmission) and use the recording for instructional or research purposes. If possible, this instructional use should occur during the first ten consecutive school days which fall within the first forty-five consecutive calendar days after the date of recording. A written explanation for any instructional or research use beyond the ten consecutive-school-day period must be submitted to the policy implementation officer within the first forty-five consecutive calendar days after the date of recording. A faculty member should use this off-air recording a maximum of twice per class in an off-air recording exhibition location during these ten days once in the course of relevant teaching activities and once for instructional reinforcement. Broadcast television programs will be recorded off the air by University staff and/or faculty for use within the University only if a request is made by an individual faculty or staff member to the responsible policy implementation officer or his/her designated representative. Verbal requests for off-air recordings will be confirmed by a signed written request. Off-air recordings will not be made in anticipation of requests. Forty-five days after an off-air recording is made, it will be erased unless a written request for retention has first been submitted to the officer responsible for implementing this policy. In no case will a recording which legally requires an off-air license be held longer than one year without an arrangement being made by the policy implementation officer to obtain an off-air recording license.

B. Duplications

If more than one faculty member, librarian, or archivist requests an off-air recording of the same broadcast television program, the person authorized to implement this Policy at that location may authorize limited duplication of such an off-air recorded program to meet the legitimate instructional or research needs of that University campus or facility. This authorized duplication will adhere to all the same off-air recording policy provisions which govern the original off-air recording. Regardless of the number of times a program is broadcast, a copyrighted broadcast television program will be recorded for

the same faculty member only once by University personnel. If a faculty member requires additional use of a broadcast television program, arrangement must be made with the officer responsible for implementing this policy to obtain the proper off-air recording license for the necessary number of copies of the program.

C. Forty-Five Day Curriculum Evaluation

Any off-air recorded program may be retained by the University for forty-five consecutive calendar days after the recording date. Between the end of the first ten consecutive school days after a program is recorded off-air and the end of the forty-five calendar day retention period, an off-air recording should only be played for faculty members, librarians, or archivists, to determine whether to retain the broadcast program within the curriculum of a University class, seminar, or program and/or retain the broadcast program in a University library or archives.

Within the forty-five day retention period, if a University faculty member, librarian, or archivist opts to include an off-air recorded program in any of the University's curricula, libraries, or archives, then that faculty or staff member shall, in writing, so inform the appropriate University officer authorized to implement this Off-Air Recording Policy. The policy implementing officer shall advise the requesting faculty and/or staff member(s) regarding the costs and procedures relative to either (1) purchasing a copy of the requested program or (2) obtaining an annual off-air recording license or a life-of-recording license.

D. Extended Use of Off-Air Recording

After the forty-five day retention period, every off-air recording of a copyrighted program will be erased from University tapes, discs, or other recording media, unless an arrangement has been made through the policy implementing officer to retain the off-air recorded program.

On each University of California campus or facility which uses off-air recorded materials, the officer responsible for implementing this policy shall perform clearinghouse functions in licensing off-air recordings in the name of The Regents of the University for his/her location and/or purchasing copies of broadcast television programs. At the end of each quarter or semester, the campus or facility policy implementing officer will provide the Senior Vice President--Administration with:

1. the titles of off-air recordings that have been licensed;
2. the number of copies per license;
3. the location where the licensed recordings are maintained; and
4. the duration of each license.

Each quarter, the Senior Vice President -- Administration will prepare and disseminate to campus and facility policy implementing officers a report which updates:

1. the list of off-air recording licenses which have been obtained for University use;
2. the number of copies licensed for each location; and
3. the duration of each license.

E. Display of Copyright Notice

All copies of copyrighted off-air recorded programs must include the copyright notice within the recording. Off-air recordings do not have to be used in their entirety. Each "fair-use" segment of a copyrighted program will include the copyright notice, as recorded from the broadcast program, and will not be altered from the original content to change the essence or meaning of the original program.

VI. RELATED INFORMATION

Federal Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes: <http://www.universityofcalifornia.edu/copyright/systemwide/porbpepb.html> (Formerly "Appendix B" in the old policy format.) (Published in the October 14, 1981 Congressional Record, pp. E4750-E4752.)

1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission -- (including simultaneous cable re-transmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be ceased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions--within the forty-five (45) calendar day retention period.

4. Off-Air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast programs as recorded.
9. Educational Institutions are expected to establish the appropriate control procedures to maintain the integrity of these guidelines.

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

VIII. REVISION HISTORY

This policy was reformatted into the standard University of California policy template effective June 1, 2012.