

Little-Known and New Copyright Concerns for the Educator: Messy Copyright Issues Related to Online Video

Chris LeBeau, M.A. Library Science, M.B.A.
University of Missouri, iSchool
University of Missouri-Kansas City, Copyright Support Team

Copyright in Video

Initial literature

Studio

Actors

Producer

Sound recording

Composer

Section 110(1) of Copyright Law

Face-to-face teaching

§ [110](#) . Limitations on exclusive rights: Exemption of certain performances and displays⁴³

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

Video Myths

Video for home use; video for educational use.

Copyrighted
Image of class
watching
video



The Schiefners watching television at home on the family farm, near Milestone, Saskatchewan, December 1956 / Library of Canada

TEACH Act

Performance and display



Father's Little Dividend, 1951,
out of copyright



Degas, The Dance Lesson, 1879
National Gallery, Open Access Collection

Can I stream this DVD? Choices:

- TEACH ACT
- “originally enacted as part of the Copyright Act of 1976 to permit performances and displays of copyrighted works for distance education instruction without a need to obtain a license or rely on fair use.”
- *CRS Report for Congress, 7/6/2006*
- FAIR USE
- criticism, comment, news reporting, teaching, scholarship, and research
- Purpose of the use
- Nature of the work
- Amount and substantiality
- Market effect

TEACH ACT Provisions (selected highlights)

APPLIES TO: Governmental body or accredited nonprofit educational institution

CONDITIONS of USE:
Performance must be “directly

CONDITIONS OF USE:
“under the actual supervision of

CONDITIONS OF USE: “offered as a regular part of the systematic mediated instructional activities”

CONDITIONS OF USE:
Copyright notice must appear

PRECONDITIONS:
Inst. “must apply ‘technological measures’ that reasonably prevent retention”

PRECONDITIONS:
“prevent unauthorized further dissemination ...to others”

TEACH ACT Provisions (selected highlights)

WORKS PERMITTED:
“performances of nondramatic literary or musical work”

WORKS PERMITTED:
“any other work, if only reasonable and limited portions ...are used”

WORKS PERMITTED:
“displays of any work comparable to the use typical in F2F displays.”

LIMITATIONS –MAY NOT BE USED:
“materials ...produced or marketed...for the express purpose of distance education” incl. textbooks and coursepacks

LIMITATIONS:
Performance or display from a copy that is not “lawfully made or acquired.”

http://assets.opencrs.com/rpts/RL33516_20060706.pdf

TEACH ACT

“...the performance or more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.”

S. Rept. 107-31 citing the Report on Copyright and Digital and Distance Education.

TEACH Act (2002)

- Performance and display
- accredited nonprofit educational institution
- material must be lawfully made and acquired
- the performance of a nondramatic literary or musical work or **reasonable and limited portions of any other work**, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session
- an integral part of a class session offered as a regular part of the systematic mediated instructional activities
- of a governmental body or an accredited nonprofit educational institution
- students officially enrolled
- Institution must have policies and provide informational materials
- no retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session;
- unauthorized further dissemination of the work in accessible form by such recipients to others
- material must have copyright notice ; there is more, please consult the legal text.
- *Please read entire text of the law: <http://www.copyright.gov/title17/92chap1.html>*
- *Section 110 (2) <http://www.copyright.gov/title17/92chap1.html#110>*

TEACH Act Checklist

Copyright Checklist: Compliance with the TEACH Act

Copyright Advisory Office

Columbia University Libraries

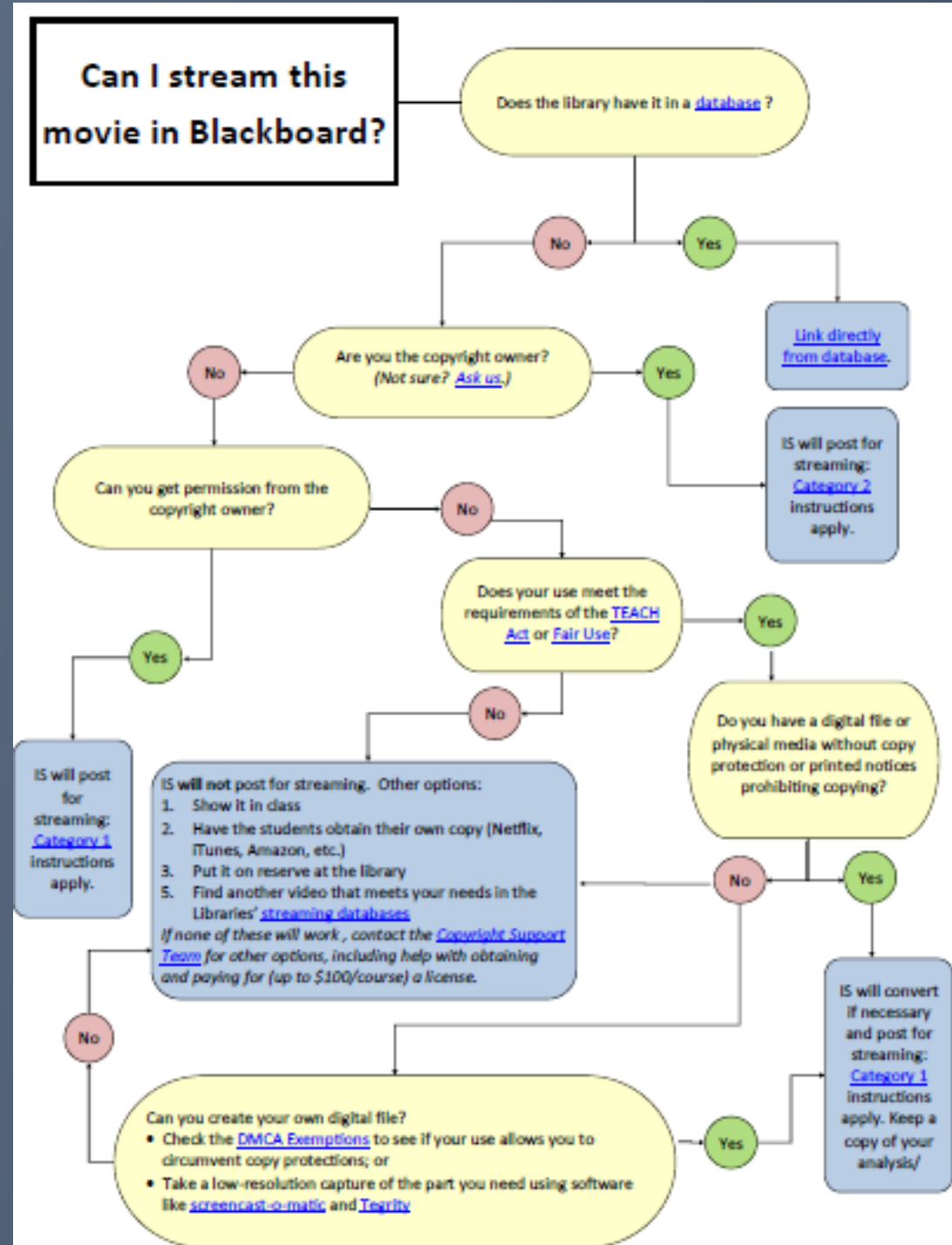
Kenneth D. Crews, Director

<http://copyright.columbia.edu/copyright/files/2010/08/checklist-for-teach-act-and-distance-education.pdf>

UMKC Decision Tree

<http://library.umkc.edu/sites/default/files/publications/streamingflowchart.pdf>

— C. Thompson



SWANK Digital Campus

- Major studios like Disney, MGM

More Licensing Agencies

- Motion Picture Licensing Corporation
 - 400 producers
 - BBC Worldwide
 - Columbia Pictures
 - Dreamworks Pictures
 - Fox
 - Hearst
 - MGM
 - Paramount
- Kanopy
 - HBO
 - Film Art Media
 - Documentary Educational Resources
 - Psychotherapy.net
 - CLIOFilm
 - California Newsreel
- Movie Licensing USA

Streaming Video Options from Producers and Aggregators

- American History in Video
- BBC Shakespeare
- Bullfrog Films
- C-Span Video Library
- Filmmaker Library
- Films on Demand
- Great Speeches Video Series
- Icarus Films
- New World Cinema
- Opera in Video
- PBS
- Naxos Video Library

Docuseek2

Streaming prices depend on organizational size and a factor of time.

1 year – \$250

3 years – \$300

5 years - \$350

Often the price of a DVD will be reduced if you buy streaming rights.

Netflix – Amazon – Hoopla – Internet Archive

Students could set up their own accounts to view videos via these services (must be 18 for Netflix).

Internet Archive is a repository of copyright free content.

Getting Permission

Photos of
people
begging for
permission

Can I convert Analog to Digital?



Photo of student with
laptop for class

Converting Analog to Digital

If you can't get the needed permission?

- 1) Is there something else you could use instead?
- 2) The amount converted should conform to the statute 110(2)
- 3) Instructor should check to see if there is a digital version available, and if the only digital version has DRM, then you may convert the analog copy.
- 4) The copy must be “retained and used solely by the institution,” no further copies may be made.

112 . *Limitations on exclusive rights: Ephemeral recordings*



oystercollector 4 years ago

I don't go to IIT.. but I'm glad you watched it again. I've posted this coz they told me its not available from NOVA anymore, and its nice to have videos like these available for others to see.. after all, scientists are still human.

Do Scientists Cheat (1 of 7)



oystercollector

Subscribe

182

4,599

8 0

MOOCs

Yes, Virginia, copyright still applies

Center for Social Media's Future of Public Media Project. 2007 Study by Pat Aufderheide and Peter Jaszi

“overwhelming majority (87 percent) of the ... survey respondents who incorporate copyrighted material make no attempt to ask permission, even though the large majority of makers believe that it is fair to pay people for use.” pg 8

“This discrepancy may have to do with the ignorance and confusion about copyright demonstrated in the interviews and surveys. The majority of makers surveyed (54 percent) said that they did not understand when it was permissible to use copyrighted materials at all. This response may, sadly, demonstrate a high level of false self-confidence among these students. In interviews, the ignorance and confusion was manifest.” pg 8

“I do worry about copyright issues. I guess I rationalize it by saying that I'm not making any money off these videos.” pg 10

~*Peter Jaszi, American University, College of Law* –
[Link to Center for Media and Social Impact](#)

Center for Media and Social Impact

- [Code of Best Practices in Fair Use for OpenCourseWare](#)
- [Code of Best Practices in Fair Use for Online Video](#)
- [Statement of the Fair Use of Images for Teaching, Research, and Study](#)
- [Society for Cinema and Media Studies' Statement of Fair Use Best Practices for Media Studies Publishing](#)

Consult this [website](#) for other Best Practices

Appendix

Copyright Term and the Public Domain in the United States

<https://copyright.cornell.edu/resources/publicdomain.cfm>

Peter Hirtle, 2014, Cornell, Creative Commons [Attribution 3.0 License](#)

Screen Capture Software for capturing short portions of videos for instruction

- Screencastomatic
- Jing
- Tegrity
- Captivate
- Camtasia

Copyright Act Definitions

- Consult Section 101 of the Copyright Act for definitions of terms like :
 - Motion picture
 - Literary work
 - Copies

- <http://www.copyright.gov/title17/92chap1.html#101>

Framework for decision making

- Is the work copyrighted?
- Is it licensed to the university in some way, streaming license, permissions already paid for a set period of time, etc.
- Are there legal exemptions to cover your use of the copyrighted material? *Like the TEACH Act, or Sect. 110(1)*
- Does Fair Use cover my use?
- Do I need to seek permission?

From Kevin Smith, Director of Scholarly Communications, Duke Univ.