

## TMCC

### Copyright & Fair Use

(excerpt from: [http://www.copyright.com/content/cc3/en/toolbar/education/get-the-facts/exceptions and limitations/Fair Use in the United States.html](http://www.copyright.com/content/cc3/en/toolbar/education/get-the-facts/exceptions%20and%20limitations/Fair%20Use%20in%20the%20United%20States.html))

Fair use is primarily designed to allow the use of the copyright protected work for commentary, parody, news reporting, research and education. However, fair use is not an exception to copyright compliance so much as it is a "legal defense." That is, if you use a copyright protected work and the copyright owner claims copyright infringement, you may be able to assert a defense of fair use, which you would then have to prove.

**Section 107 of the United States Copyright Act** lists four factors to help judges determine, and therefore to help you predict, when content usage may be considered "fair use."

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. If a particular usage is intended to help you or your organization to derive financial or other business-related benefits from the copyright material, then that is probably not fair use.
2. The nature of the copyrighted work. Use of a purely factual work is more likely to be considered fair use than use of someone's creative work.
3. The amount and substantiality of the portion used in relation to the copyright protected work as a whole. There are no set page counts or percentages that define the boundaries of fair use. Courts exercise common-sense judgment about whether what is being used is too much of, or so important to, the original overall work as to be beyond the scope of fair use.
4. The effect of the use on the potential market for or value of the copyright protected work. This factor looks at whether the nature of the use competes with or diminishes the potential market for the form of use that the copyright holder is already employing, or can reasonably be expected soon to employ, in order to make money for itself through licensing.

### The TEACH Act

(excerpted from: <http://copyright.lib.utexas.edu/teachact.html>)

The TEACH Act expands the scope of educators' rights to perform and display works and to make the copies integral to such performances and displays for digital distance education, making the rights closer to those we have in face-to-face teaching. But there is still a considerable gap between what the statute authorizes for face-to-face teaching and for distance education. For example, as indicated above, **an educator may show or perform any work related to the curriculum, regardless of the medium, face-to-face in the classroom** - still images, music of every kind, even movies. There are no limits and no permission required. **Under 110(2)**, however, even as revised and expanded, **the same educator would have to pare down some of those materials to show them to distant students** or make them available over the Internet to face-to-face students. The **audiovisual works and dramatic musical works may only be shown as clips** -- "reasonable and limited portions," the Act says.

### Section 110(2)'s expanded rights

#### 1. Transmitting performances of *all of a non-dramatic literary or musical work*

Non-dramatic literary works as defined in the Act exclude audiovisual works; thus, examples of permitted performances in this category in which entire works may be displayed and performed might include a poetry or short story reading. Non-dramatic musical works would include all music other than opera, music videos (because they are audiovisual), and musicals.

#### 2. Transmitting *reasonable and limited portions of any other performance*

This category includes all audiovisual works such as films and videos of all types, and any dramatic musical works excluded above.

#### 3. Transmitting displays of any work in *amounts comparable to typical face-to-face displays*

This category would include still images of all kinds.

## Exclusions from coverage

**Not everyone, nor every work, is covered.** Section 110(2) **only applies to accredited nonprofit educational institutions.** The rights granted do **not** extend to the use of **works primarily produced or marketed for in-class use in the digital distance education market**; **works** the instructor knows or has reason to believe were **not lawfully made or acquired**; or **textbooks, coursepacks** and other materials typically purchased by students individually.

This last exclusion results from the definition of "**mediated instructional activities**," a key concept within the expanded Section 110(2) meant to limit it to the kinds of materials an instructor would actually incorporate into a class-time lecture. In other words, the **TEACH Act covers works an instructor would show or play during class** such as movie or music clips, images of artworks in an art history class, or a poetry reading. It does **not** cover materials an instructor may want students **to study, read, listen to or watch on their own time outside of class**. Instructors will have to rely on other rights they may have to post those materials, such as the fair use statute, or get permission.

### Conditions:

In addition, the statute specifies **a formidable list of circumstances** under which the permitted institutions may make the permitted uses:

#### 1. The performance or display must be:

- a. A regular part of systematic **mediated instructional activity**;
- b. Made **by, at the direction of, or under the supervision of the instructor**;
- c. **Directly related and of material assistance to the teaching content**; and
- d. For and technologically **limited to students** enrolled in the class.

#### 2. The institution must:

- a. Have **policies** and provide **information about**, and give **notice** that the materials used may be protected by **copyright**;
- b. Apply technological measures that **reasonably prevent recipients** from **retaining** the works beyond the class session and **further distributing** them; and
- c. **Not interfere with technological measures** taken by copyright owners that prevent retention and distribution.

### Authority to make copies:

Finally, a new section was added to the Copyright Act to authorize educators to make the copies necessary to display and perform works in a digital environment. New Section 112(f) (ephemeral recordings) works *with* Section 110 to permit those authorized to perform and display works under 110 to **copy digital works and digitize analog works** in order to make authorized displays and performances **so long as**:

**1. Such copies are retained only by the institution and used only for the activities authorized by Section 110; and**

**2. For digitizing analog works, no digital version of the work is available free from technological protections**

**that would prevent the uses authorized in Section 110.**

Because of the many limitations, Section 110(2) won't go far enough in many situations; remember that **educators still have recourse to fair use** to make copies, create derivative works, display and perform works publicly and distribute them to students. So, don't be discouraged by Section 110(2)'s scope and complexity. If it covers what you want to do and you and your institution can comply with all of its conditions and limitations, great! If it does not, you still have the fair use statute.

### Resources:

Reproduction of Copyrighted Works by Educators and Librarians

<http://www.copyright.gov/circs/circ21.pdf>

Copyright Crash Course

<http://copyright.lib.utexas.edu/teachact.html>

Fair Use in the United States

[http://www.copyright.com/content/cc3/en/toolbar/education/get-the-facts/exceptions\\_and\\_limitations/Fair Use in the United States.html](http://www.copyright.com/content/cc3/en/toolbar/education/get-the-facts/exceptions_and_limitations/Fair_Use_in_the_United_States.html)

Copyright permission through Copyright Clearance Center  
<http://www.copyright.com/content/cc3/en/toolbar/getPermission.html>

TMCC Copyright Infringement Policy  
<http://www.tmcc.edu/ito/policies/index.php?Policy=Copyright%20Infringement>

NSHE Intellectual Property Policy  
<http://system.nevada.edu/tasks/sites/Nshe/assets/File/BoardOfRegents/Handbook/T4-CH12%20-%20Intellectual%20Property%2C%20Research%2C%20and%20Entrepreneurial%20Activity.pdf>

# Teach Act Checklist

To ensure your copyrighted use complies with the Teach Act you must satisfy *all* of the following:

- ☐ My institution is a nonprofit accredited educational institution or a governmental agency
- ☐ It has a policy on the use of copyrighted materials
- ☐ It provides accurate information to faculty, students and staff about copyright
- ☐ Its systems will not interfere with technological controls within the materials I want to use
- ☐ The materials I want to use are specifically for students in my class
- ☐ Only those students will have access to the materials
- ☐ The materials will be provided at my direction during the relevant lesson
- ☐ The materials are directly related and of material assistance to my teaching content
- ☐ My class is part of the regular offerings of my institution
- ☐ I will include a notice that the materials are protected by copyright
- ☐ I will use technology that reasonably limits the students' ability to retain or further distribute the materials
- ☐ I will make the materials available to the students only for a period of time that is relevant to the context of a class session
- ☐ I will store the materials on a secure server and transmit them only as permitted by this law
- ☐ I will not make any copies other than the one I need to make the transmission
- ☐ The materials are of the proper type and amount the law authorizes:
  - Entire performances of nondramatic literary and musical works
  - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- ☐ The materials are not among those the law specifically excludes from its coverage:
  - Materials specifically marketed for classroom use for digital distance education
  - Copies I know or should know are illegal
  - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session
- ☐ If I am using an analog original, I checked before digitizing it to be sure:
  - I copied only the amount that I am authorized to transmit
  - There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes

# WEBCOLLEGE COPYRIGHT POLICY

## WebCollege Copyright Policy

(adapted from UNLV policy, please include in online course syllabi. <http://www.unlv.edu/assets/provost/policies-forms/Digital-Media-Copyright-Compliance.pdf>)

Unless covered under the provisions of Fair Use or the TEACH Act, it is a violation of federal copyright laws to reproduce copyrighted material without permission of the copyright holder. Copyright law includes electronically stored materials such as music, movies and software. TMCC WebCollege will investigate all digital and media copyright infringement complaints and take appropriate action.

## Faculty Acknowledgement of Copyright Policy

TMCC WebCollege is committed to upholding the intellectual property rights of faculty students and staff.

WebCollege will not repurpose or reuse any content, digital or otherwise, developed for or submitted to TMCC online classes, without explicit consent of the author, excepting works for hire, backups and/or archives as required.

TMCC WebCollege strives for full compliance with all applicable copyright policies and laws. If copyright issues are reported, WebCollege will attempt to contact the faculty or student so that they can remediate the concerns. WebCollege reserves the right to remove, or otherwise make publicly unavailable, any content hosted on its systems that is found to be in violation of copyright law.

I, \_\_\_\_\_, acknowledge that I have received and read the accompanying materials regarding TMCC, NSHE, and federal copyright rules, educational Fair use, and the TEACH Act. I understand that copyright clearance is the responsibility of course designers and/or faculty. I will apply due diligence to securing relevant rights and ensuring/or ensuring compliance with the TEACH ACT and or Fair Use.

Signed:

Date: