Special Topics in Copyright: Showing Videos in Class and on Campus

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Purpose of Copyright Law

“To Promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

United States Constitution, Article I, Section 8, Clause 8
Limits on Copyright Holder’s Exclusive Rights

• Copyright law imposes several statutory limits on a copyright holder’s exclusive rights.

• If a use falls within one of these limits, permission does not need to be obtained from the copyright holder prior to using a copyrighted work.

• If a use exceeds these limits, permission must be obtained prior to use.
• 17 U.S.C. § 110(1) – face to face teaching exception
  • Only applies to in person teaching activities where showing the video is for educational or teaching purposes.

• 17 U.S.C. § 110(2) (TEACH Act)
  • Permits showing only a reasonable and limited portion of videos to online students as part of “systematic mediated instructional activities”
  • Several cumbersome requirements imposed upon the instructor, the institution, and IT before TEACH Act can be invoked.

• Fair Use (17 U.S.C. § 107)
  • Apply four factor analysis for using videos in teaching or other purposes.
  • Better approach than TEACH Act for showing videos online - although showing full video still unlikely (DMCA).
  • Fair Use webinar - https://www.atla.com/webinar/all-about-fair-use/
• DMCA prohibits circumvention of technological protection measures found on media formats such as DVDs and Blu-Rays.
  • Every three years Librarian of Congress crafts new or renews existing exemptions.
• Exemption for Access by Persons with Disabilities
  • Educational institutions can add captions and audio descriptions to create accessible versions when not otherwise reasonably available.
• Exemption for Education - “Short portions” from lawfully made and acquired media may be digitized for the following purposes:
  • By educators and students for the purpose of criticism, comment, teaching, or scholarship.
  • By faculty of MOOCs offered by accredited nonprofit educational institutions (must also meet TEACH Act requirements) in film studies or other courses requiring close analysis of film and media excerpts.
  • By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission.

Digital Millennium Copyright Act (DMCA) Exemptions
Public Performance Rights

• YES -- you need public performance rights:
  • If the showing of the video is open to the public, such as a screening at a public event, OR
  • If the showing is in a public space where access is not restricted such as a showing of a film for a class but in a venue that is open to anyone to attend, OR
  • If persons attending are outside the normal circle of family and friends, such as a showing of a film by a club or organization.

• NO -- you do not need public performance rights:
  • If you are privately viewing the film in your home with only family and friends in attendance, OR
  • If you are an instructor showing the film in class as part of the course curriculum to officially enrolled students in a classroom that is not open to others to attend, OR
  • If the film is in the public domain.
What about showings by student clubs or other campus organizations?

• If a student club or campus organization views a film with a plan for discussion afterwards and the group’s purpose and activities are ordinarily educational in nature, likely fair use to view the film without public performance rights.

• If the film is hosted by a group or club and it is advertised and open to the public (e.g., film series, etc.), this is generally viewed as entertainment even if hosted or sponsored by an educational group or club. No matter how educational the setting or how tied to the curriculum, this is generally considered not to be fair use and public performance rights should be obtained.
Licensing Restrictions

Subscription Streaming Services (e.g., Netflix, Hulu)

Commercial Digital Copies

Licenses Accompanying Physical Media

- Restrictions to digitizing/using online.
- Public Performance License.
- Communicate license terms to faculty, staff, and students!
  - See https://docs.lib.purdue.edu/charleston/2016/cddiscol/8/
  - “Home Use Only” warning.
Finding Alternatives

- Community Video Hosting Sites (e.g., YouTube, Vimeo) – caution!
- Library Database Products
- Free and Legal Online Video
- Students
Additional Resources

• Best Practices for Fair Use in Online Video
  https://cmsimpact.org/code/code-best-practices-fair-use-online-video/

• “Struggles and Solutions for Streaming Video in the Online Classroom” – my 2012 article published in American Journal of Online Education
  https://doi.org/10.1080/08923647.2012.728078

• LibGuide
  https://atla.libguides.com/copyright/showingmovies
Thank you

https://atla.libguides.com/copyright