



Copyright and Online Classroom Instruction

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Carla Myers
Coordinator of Scholarly
Communications
Miami University Libraries
myersc2@miamioh.edu

FAQs

- » If it's on the internet I can use it however I want.
- » If it's an educational use I can use anything I want, however I want, right?
- » I'll never get caught!

Seven Options



Online Instruction

Works may be shared with students through Canvas if:

1. The material is in the public domain
2. You own the copyright, or
3. The work is licensed for reuse, or
4. You link to content made legally and freely available online
5. The use falls under one of the exceptions found in US copyright law
6. The rightsholder grants permission for the use, or
7. You obtain a license to use the work

1. Using Public Domain Works

» Works published before 1923 are in the public domain. Use them anyway you like!

- Project Gutenberg: <http://www.gutenberg.org/>
- Hathi Trust: <http://www.hathitrust.org/>
- Google Books: <http://books.google.com/>

» Works created by the U.S. Federal Government

- Keep in mind that these can have copyrightable components. Check the title page of the document or, if in doubt, contact the agency that produced the work.

2. You Own the Copyright

- » PowerPoint presentations
- » Notes, assignments, etc.
- » Your published works, including books, book chapters, worksheets, etc.
 - Check your publication agreement to ensure you still have these rights!

3. Using Licensed Content

- » Is it a work under license as part of the library's collection?
- » Is the work a Creative Commons work?
- » Would the use of the work fall under a campus/institutional license, e.g. BMI/ASCAP license for musical performances, a campus MPLC license.
- » Is access to the work controlled by an End User License Agreement (EULA) that the person asking the question may have entered into (e.g. a Netflix subscription, their iTunes account).

4. Linking

- » There are no copyright concerns when linking to materials legally made available on the web
 - News sites
 - Educational sites
 - Youtube (not bootlegged videos though!)

5. Utilizing an Exception

- » Fair use
- » The TEACH Act

Fair Use (17 U.S.C. § 107)

Notwithstanding the provisions of sections 106 and 106A, 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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Purpose of the Use

- »Teaching/Research/Scholarship
- »Criticism/commentary
- »Nonprofit institution
- »Commercial use
- »Transformative

- Have you turned it the original into something new by adding new expression or meaning?
- Parody, Mash-ups, using a resource in a way that perhaps it was not originally intended.



Photo Credit:
IMDB.com

The Nature of the Work

Explores the characteristics of the work being used...

- Nonfiction/factual
- Fiction/creative
- Published or unpublished
- Consumables (e.g. workbook)

The Amount & Substantiality of the Portion Used

- » Think quantity and quality
- » Consider the amount needed to serve the purpose of the use in relation to the work being used.
- » There are no absolute rules as to how much of a copyrighted work may be copied and still be considered a fair use.

-Maxtone-graham v. Burtchaell

Beware of the Guidelines!

- » Classroom Photocopying Guidelines (1976)
 - Use must be “spontaneous”
 - Brevity...
 - Can use 1 chapter or 10% of a work
 - No more than 250 words from a poem
 - Only 1 chart, picture or diagram from a work
 - Must seek permission for subsequent use
- » Off-Air Recording of Broadcast Programming for Educational Purposes (1981)

Carry no force of law and provide no safe harbor against infringement!

Effect on the Market

- » Is your use resulting in lost revenue for the rightsholder?
- » Could your use replace sale of the work?
- » Could your use help the market for the item, e.g. comment, critique, parody?

The TEACH Act

- » The Technology, Education and Copyright Harmonization Act, or TEACH Act was passed by Congress in 2002 to address copyright issues in distance education
- » Found (mostly) in Section 110(2) of US copyright law

The TEACH Act, Line-by-Line (though out of order)

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

- » 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
- » by or in the course of a transmission, if—

The TEACH Act, Line-by-Line (though out of order)

- » The performance or display is made by, at the direction of, or under the actual supervision of an instructor
- » [Is] as 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;
- » The performance or display is directly related and of material assistance to the teaching content of the transmission;

The TEACH Act, Line-by-Line (though out of order)

- » The transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—
 - Students officially enrolled in the course for which the transmission is made; or
 - Officers or employees of governmental bodies as a part of their official duties or employment; and

The TEACH Act, Line-by-Line (though out of order)

- » In the case of digital transmissions, applies technological measures that reasonably prevent—
 - [The] retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and
 - Unauthorized further dissemination of the work in accessible form by such recipients to others; and
 - Does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

The TEACH Act, Line-by-Line (though out of order)

- » The transmitting body or institution—
 - Institutes policies regarding copyright
 - Provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and
 - Provides notice to students that materials used in connection with the course may be subject to copyright protection

The TEACH Act, Line-by-Line (though out of order)

- » Except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks
- » Or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired

Oy!



Definitions

- » **Perform**-recite, render, play, dance, or act a work, or, in the case of a motion picture to show images in any sequence or to make accompanying sounds audible.
- » **Display**-to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process. Or, in the case of a motion picture or other audiovisual work, to show still images (frames).

Definitions

- » **Nondramatic Literary Work** - Generally, works that are intended to be read.
 - Examples include fiction and nonfiction, poetry, reference work.
- » **Nondramatic Musical Work** - playing of instruments, singing of songs

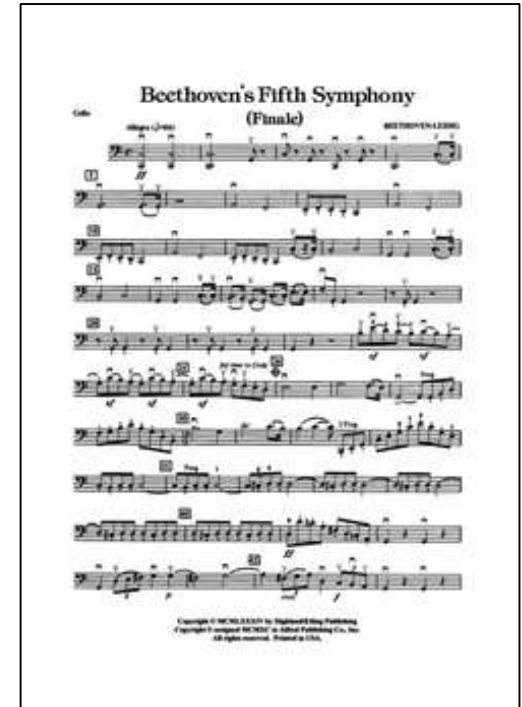
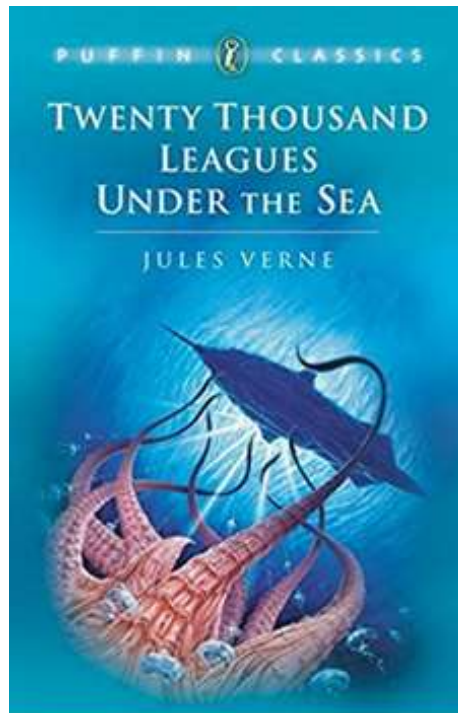
Definitions

- » **Dramatic Works** - Works that portray a story are intended to be performed for an audience.
 - Frequently [represents the action as it occurs](#) rather than simply narrating or describing the action.
 - Examples of dramatic literary works include plays and radio and television scripts
 - Examples of dramatic musical works include opera and musicals.
- » **Any Other Work** - motion pictures and other audiovisual works, sound recordings.

Practice!

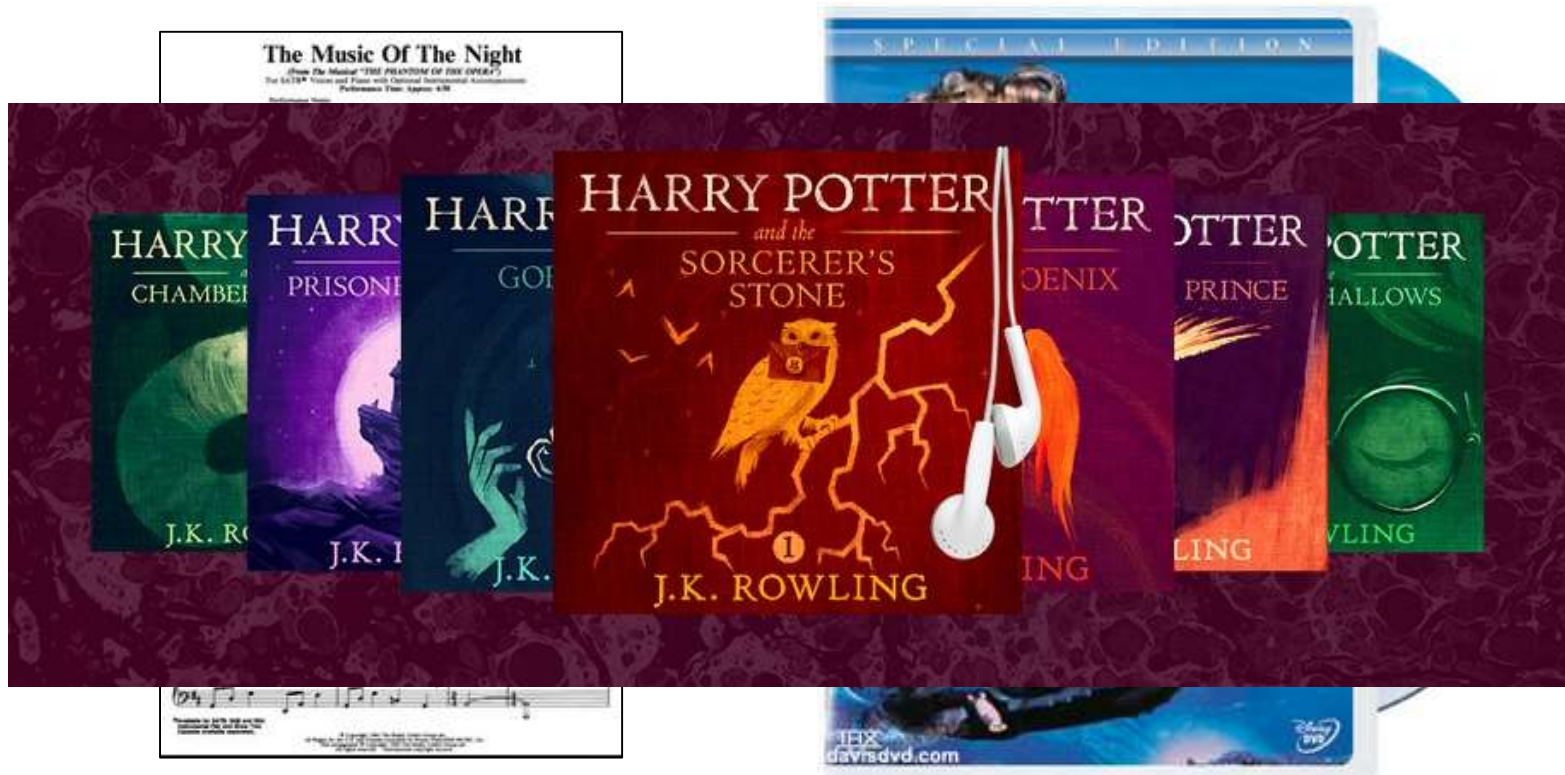
What the TEACH Act Allows

- » The [full] performance of a nondramatic literary or musical work



What the TEACH Act Allows

- » Reasonable and limited portions of any other work



What is Reasonable and Limited?

A report put forward by the Senate in 2001 states that “What constitutes a “reasonable and limited” portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.”

- U.S. Congress, Senate, Technology, Education and Copyright Harmonization Act of 2001. 107th Cong., 1st sess., 2001, S. Doc. 7, serial 107-31, 7-8

A Congressional Research Service report put forward in 2006 states “the exhibition of an entire film may possibly constitute a ‘reasonable and limited’ demonstration if the film’s entire viewing is exceedingly relevant toward achieving an educational goal; however, the likelihood of an entire film portrayal being ‘reasonable and limited’ may be rare.”

- Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 8.15[C][2][a] (2006).

What the TEACH Act Allows

- » The display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session.



What the TEACH Act Does Not Allow

- » Digitization of works produced or marketed primarily for online education
- » Works that are made from a copy that was not lawfully acquired –OR—that the transmitter knew or had reason to believe was not lawfully made and acquired

TEACH Act Compliance

- ✓ Nonprofit educational institution
- ✓ At an institutional level, copyright policies, notifications, and educational programming must be in place to help establish the appropriate use of protected works in an educational setting
- ✓ Technological measures must be put into place by system administrators to limit access to only those students enrolled in a course
- ✓ Must find ways to prevent students from retaining works “for longer than the class session” and to limit the “unauthorized further dissemination” of copyright works outside the class learning environment

Recommendations

- » Only digitize as much as needed to teach a work (clips), though full work may be justifiable!
- » Stream all audio and media files
- » Use a Content Management System/Learning Management System to limit access
- » Work with school administrators to provide some type of copyright education

6. Obtaining Permission from Rightsholder

- » Documented in writing
 - This includes student work!
- » Securing Permission
 1. Contact the rightsholder
 2. Request their permission to use the work providing detailed info on who, what, and how
- » Sample permissions letters are available online:
<http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/>

7. Licensing

- » License for the reuse of print works:
<http://www.copyright.com/>
- » License for musical performances:
 - BMI: <https://www.bmi.com/>
 - ASCAP: <https://www.ascap.com/>
- » License for movies & TV shows:
 - SWANK: <https://www.swank.com/>
 - MPLC (umbrella licenses):
<http://www.mplc.com/>

Scenarios!



Scenario 1

» You have a scholarly article you want your students to read. Step-by-step, what do you do?

Scenario #2

You teach an advertising class and want your students to watch this year's Super Bowl ads and comment on them. Step-by-step, what do you do?

Scenario #3

You would like your students to read a few chapters from a book as part of a class assignment. Step-by-step, what do you do?

Scenario #4

You wish to share with your students the famous speech scene at the end of the movie *The American President*. Step-by-step, what do you do?

In Summary



Work Through Your Options

1. The material is in the public domain
2. You own the copyright, or
3. The work is licensed for reuse, or
4. You link to content made legally and freely available online
5. The use falls under one of the exceptions found in US copyright law
6. The rightsholder grants permission for the use, or
7. You obtain a license to use the work

Why is this all important?

- » Having a basic knowledge of the law will help you better understand your rights and responsibilities in using protected works
- » It is especially important in academia where we come are constantly having to deal with protected works as part of our regular job duties

Making Good Choices

- » It's the law
- » It's the ethical thing to do
- » Modeling the behavior we expect from students

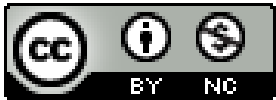
We've Got it Good

- » There are many exceptions written into the law which allow us to use protected works for educational purposes
- » Your part is to understand your rights and responsibilities under the law

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