

Physical/In-Person Courses – Use of Third-Party Materials and Resources

The purpose of this document is to explain how copyright law enables course instructors to use works that already exist in the physical (in-person) classroom environment. The below information focuses on “Fair Use,” a part of United States copyright law. Whether or not you are within the boundaries of fair use depends on the facts of your particular situation. To determine whether you are within fair use, the law calls for a balanced application of four factors. These four factors come directly from the fair use provision, Section 107 of the U.S. Copyright Act.

An Explanation of Fair Use

Fair Use is the right given in copyright law to use copyrighted material without permission or payment. Fair Use is not infringement if it fits within four factors listed in the law. Each of these factors has been interpreted by courts. Courts are very clear that no single factor decides fair use; each one has to be considered. Keep in mind that all four factors need to be applied. For example, do not jump to a conclusion simply based on whether your use is educational or commercial. The four factors need to be evaluated and applied to the copyrighted work, the amount of the work used, and the potential impact of the use on the market or value of the work.

Factor 1: Purpose and Character of the Use

This is the only factor that is about how a new user plans to use something. The other three factors are about the existing work that is being used.

Purposes that favor fair use include education, scholarship, research, and news reporting, as well as criticism and commentary. Non-profit purposes also favor fair use (especially when coupled with one of the other favored purposes.)

Commercial or for-profit purposes weigh against fair use.

Example: A commercial use that is also critical may sometimes be fair use; a non-profit critical use is even more likely to be fair use.

Factor 2: Nature of the Original Work

One part of this factor is whether the work is published or not. Using published material is more likely to be fair use, and using unpublished material is less likely to be fair use.

Another part of this factor is whether the work is more "factual" or more "creative". Using a factual work is more likely to be fair use, using a creative work is less likely to be fair use. This is related to the fact that copyright does not protect facts and data.

With some works, it's fairly easy to decide whether the work is factual or creative: a textbook is usually more factual than a novel. For other works, it can be quite confusing: is a documentary film "factual", or "creative" - or both?

Example: Quoting from an unpublished record of daily temperature readings is more likely to be fair use than quoting from an unpublished novel.

Factor 3: Amount and Substantiality of the Portion Used

One part of this factor is the amount of the original work you are using. Using a smaller amount of the source work is more likely to be fair use, and using a larger amount is less likely to be fair use. But courts have been very clear that “amount” here is proportional.

There is a lot of questionable advice about “amount” in fair use - courts have been very clear that it is supposed to be about what “proportion” of the original work is used, but guidelines sometimes give exact numbers. A quote of 250 words from a 300-word poem is less likely to be fair use than a quote of 250 words from a 5,000 word article.

Another part of this factor is whether the part of the work that you are using is “substantial”, or central to the original work. It is less likely to be fair use to use central parts of the work, and more likely to be fair use if you use a more outlying part of the work.

Whether something is “substantial” is fairly easily understood in some contexts: borrowing the melody of a song may be borrowing the “essence”, even if it's a small part of the song. In many contexts, however, it can be much less clear: what is the “essence” of a television series?

Example: Copying all the “best parts” of a new unauthorized celebrity biography before it is published is unlikely to be fair use, but quoting just a couple of them in a book review might be fair use.

Factor 4: Effect of the Use on the Potential Market for, or Value of, the Source Work

This factor asks users to think like amateur economists, analyzing existing and potential future markets for a work, and predicting the effect a proposed use will have on those markets.

More simply explained: is the use in question substituting for a sale the source’s owner would otherwise make, either to the person making the proposed use, or to others? Courts tend to favor the source owner. Nevertheless, it is possible for a use to be fair even when it causes market harm.

Example: It’s more likely to be fair use to quote extensively from a book that is out-of-print, than one just published recently. But there is also a market for permissions to quote from many out of print books, so a very extensive quotation from even an out-of-print book might not be fair use if the other factors aren’t in favor. For a book that is both out-of-print where there is no market for quotation permissions, fair use would be even more likely.

Transformative Use

Transformative use is an addition to fair use law, having been first raised in a Supreme Court decision in 1994. (*Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994).) A new work based on an old one work is transformative if it uses the source work in completely new or unexpected ways. Importantly, a work may be transformative, and considered a fair use, even when all four factors weigh against fair use.

Parody is one of the most clearly identified transformative uses, but any use of a source work that criticizes or comments on the source may be transformative in similar ways. Legal analysis about this kind of transformative use often engages with free speech issues and unusual artistic techniques.

Courts have also sometimes found copies made as part of the production of new technologies to be transformative uses. One very concrete example has to do with image search engines: search companies make copies of images to make them searchable, and show those copies to people as part of the search results. Courts found that small thumbnail images were a transformative use because the copies were being made for the transformative purpose of search indexing, rather than simple viewing.

Physical/In-Person Courses Print Materials:

The following guidelines are based on best practices of Section 107 (Fair Use) of the Copyright Law recommended by American Library Association (ALA) and Association of College and Research Libraries (ACRL).

It is **Best Practice** to provide direct links to students for electronic materials owned by Thiel College Library, using the permanent link function from a library-purchased database or the link for the electronic Course Reserves through the library's LMS, provided by the Circulation Librarian. If the material is in print format only, put it on reserve at the library for students to read. **The best option is to NOT make any physical copies.** Copyright issues with course materials usually arise because you're making copies.

1. How can you share course materials without making copies?

- When the readings are publicly available online, linking to them is allowed.
- When the readings are available online via a library subscription, link to them. Look for a "Permanent Link" or "Permanent URL" to add them to your course site.
- Students can look up and find required materials using library resources.
- Have students access their own copies, or watch or listen to video or audio via personal accounts.
- Put books or journal issues containing the readings on course reserve (physically or electronically) in the library.

2. If you have to make copies to share course materials with your students, you will have to think about whether such copies are already permitted by law, or whether you will need permission from (and usually payment to) the copyright holder.

In the case that Thiel College Library DOES NOT have the material in its collection:

1. Can I make copies from copyrighted materials for discussion in my class without permission?

Yes. But you're limited to:

- Making a copy of a single chapter fewer than 10,000 words or 10% of a book, whichever is less.
- Making a single copy of an article from a journal or newspaper.
- Making a single copy of a short essay from a collection or anthology.

- Make a single copy of a short story from a collection or anthology.
- Make a single copy of a short poem from a collection or anthology.
- Make a single copy of a chart from a book, journal or newspaper.
- Make a single copy of a graph from a book, journal or newspaper.
- Make a single copy of a diagram from a book, journal or newspaper.
- Make a single copy of a picture from a book, journal or newspaper.
- You should not exceed 9 instances of such copying during the semester.
- Using the same materials in more than one course is prohibited.
- You are also limited to use one work from a single author.
- You are also limited to use one article from a journal. Permission is required if more than one article from the same journal is needed.
- Using the same materials is limited to one semester only. In order to use the same materials in more than one semester you need to ask for permission from the copyright holder.

2. Can I make multiple copies of materials for distribution to my students in the class?

Yes. But you're limited to:

- Make multiple copies of an excerpt from a printed book not to exceed 10% of the whole or 1,000 words.
- Make multiple copies of an article from a journal or newspaper less than 2,500 words.
- Make multiple copies of a short essay from a collection or anthology less than 2,500 words.
- Make multiple copies of a short story from a collection or anthology less than 2,500 words.
- Make multiple copies of a short poem from a collection or anthology less than 250 words.
- Make multiple copies of a chart from a book, journal or newspaper.
- Make multiple copies of a graph from a book, journal or newspaper.
- Make multiple copies of a diagram from a book, journal or newspaper.
- Make multiple copies of a picture from a book, journal or newspaper.
- You should not exceed 9 instances of such copying during the semester.
- Using the same materials in more than one course is prohibited.
- You are also limited to use one work from a single author.
- You are also limited to use one article from a journal. Permission is required if more than one article from the same journal is needed.
- Using the same materials is limited to one semester only. In order to use the same materials in more than one semester you need to ask for permission from the copyright holder.

3. Do the rules above apply to textbooks?

Yes and No. Only in case the book is out-of-print and no longer available for purchase. Note that one of the factors of "Fair Use" is the effect of using copyrighted materials on the market. **Textbooks are books published with the intention they will be purchased. Copying textbooks means you are preventing the publishers from profiting on their product.** Excuses such as faculty did not order textbooks on time, or the cost of textbooks are too much for the students, etc., do not place copying textbooks under fair use and are often considered to be an illegal act.

Generally, do not make copies of textbooks for your students. You can place a legally purchased copy of the textbook (Review copies, Desk copies given for free to the faculty need permission from the publishers) on

library reserve for your students to access for one semester. To keep the same textbook on reserve indefinitely, you likely need to obtain permission from the copyright holder.

4. Do the rules above apply to published sample tests?

Yes and No. Books containing sample test questions such as SAT, GMAT, etc. are treated like textbooks. Each question in these test books are copyrighted individually. So, there is no minimum amount of use that falls under fair use. You need to get permission from the publisher to use these test books in class. Best practice would likely be to ask students in class to purchase a copy of the book.

Physical/In-Person Courses Audio and Visual Materials:

1. Can I play/show audio/video materials in my class?

Yes. But you're limited to:

- Making sure the audio/video material is legally recorded (not a copy) and acquired. (See the rules on off-the-air recorded video programs below).
- Make sure the audio/video material is closely related to the course content and is not used for entertainment.
- Make sure that the attendees in the classroom are all officially registered for the course and there are no guests and visitors in the class, excluding guest instructors.

2. Can I show video programs from online streaming services like Netflix, Amazon Prime, Hulu, Vimeo, etc. using my personal account?

- In general, No. Your account is a personal account for home use only. You cannot use your own account for institutional use. It is not actually a copyright issue. It is against your agreement with the service provider. This falls under contract law. Netflix does have a unique feature that allows for public showing of certain educational documentaries or other materials.

3. Recently, I have seen very good documentaries and movies on Netflix, Amazon Prime, Hulu, and other streaming services. Can the library subscribe to these services so I can show these programs to my students in class or ask them to watch them at home?

- Unfortunately, these services have not come up with a subscription model for educational institutions yet. The only model for subscription they offer is for individuals for personal use. Many libraries have this problem. In most cases these streaming services do not even release their programs on DVD so the libraries can purchase them.
- In addition, you are not permitted to use short clips of such streaming videos in you class. Copyright law (Digital Millennium Copyright Act) allows you to make short clips of DVDs for you class use, both face-to-face physical classroom setting or online. But with streaming video platforms such as Netflix, Amazon Prime, Hulu, etc. you cannot do that because of contract law that supersedes copyright law.

4. **Why is it acceptable that I show a video in my class that I own or have borrowed from a library or rented from a video store, but I cannot access my personal account to a streaming video service such as Netflix in class?**

- There are many legal technicalities in the copyright law as in many laws that do not make sense to the lay person. This is a case of the difference between "**First-Sale Doctrine**" in copyright law and "**Contract Law**".
- According to the law, borrowing a DVD from a library or renting one from a video store is like purchasing it for a short period of time. You actually own the item for that period of time. You do not sign any agreement or contract with the library or store on how you use the item. But, in the case of Netflix or other streaming video services, you actually do not purchase anything. You pay for accessing the service they provide and you sign a contract (when you click on "I accept terms and conditions") with the service provider. You are bound to the content of the contract. If your contract states that the service is for personal home use only, you cannot use the service for educational purposes at an educational institution. **Remember, contract law supersedes copyright law.**

5. **What about free online services such as PBS, etc.? Can I show their programs in class?**

- Make sure these online services are legitimate. Read their terms of use. If they restrict their services to personal use and ask you to agree with their terms, you cannot show their programs in class even if your use is not for commercial purposes. Recently, PBS has connected its "Watch Online" feature for its programs to membership in PBS affiliate TV stations across the country (PBS Passport). Again, since the membership is an individual/personal one, the programs cannot be shown in the classroom or to the public.

6. **What about YouTube? Can I show videos from YouTube in my class?**

- YouTube contains millions of videos. Some of them are copyright protected. YouTube claims that its staff are trying hard to remove copyrighted materials posted illegally from its website. But be careful and use common sense in using YouTube videos since according to DMCA, users of copyrighted materials are responsible for what they use, not the platform staff where videos are located. The safest way to use YouTube videos is to use "**Creative Commons**" option under the "**Filter**" in your search results.

7. **What about video programs I have recorded off the TV at home? Can I show those in class?**

- Make sure they are recorded off TV stations available free of charge through antenna channels. You cannot record programs from cable or satellite TV that requires subscription unless the channel recorded is also available for free through antenna network. You can keep and use a program recorded in this way for only 45 days since its broadcast. You have to use the recorded program once within the first 10 days after recording it. You can use it once more before 45 days limit ends. Remember these rules apply to the programs that the TV station is the copyright holder

of. You cannot apply these rules to programs such as feature films (movies) that the TV station has shown and does not hold the copyright to.

8. My classroom does not have a VCR to play VHS tapes. Can I transfer my old VHS tape to a DVD and use it in my class?

- If you are using a short clip, you can transfer it to another format (Digital Millennium Copyright Act). Change of format for the entire video program is not allowed without the copyright holder's permission or if the program is already available in the market in a more advanced format. Change of format for the entire video program is permitted only in case of obsolete formats (Title 17-Section 108 of the Copyright Law) for preservation purposes only (see below).

Copies for Preservation: Copyright law allows libraries in educational institutions to make a digital copy (DVD for video or CD for audio) of a deteriorating material (VHS tape, audio cassette tape, etc.) no longer available in any format in the market for preservation purposes only. The digitized materials cannot leave the library premises (do not circulate). This process is only for archival purposes.

Works Consulted/Referenced/Helpful Resources:

<https://libguides.ala.org/copyright>

<https://librarycopyright.net/>

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

<https://copyright.gov/fair-use/index.html>

<https://www.lib.umn.edu/services/copyright/use#variety>

<https://sites.google.com/macalester.edu/copyright/home>

<https://copyright.columbia.edu/basics/fair-use.html>

<https://cmsimpact.org/program/fair-use/>

[Streaming While Teaching: The Legality of Using Personal Streaming Video Accounts for the Classroom / Jonathan I. Ezor *Touro Law Center* \(2013\)](#)

Use of Third-Party Materials and Resources in Online Courses

General Guidelines:

1. These guidelines exist to assist instructors in understanding the limitations on performance and display rights of materials in the online classroom.
2. These guidelines follow stipulations in Copyright Law, Digital Millennium Copyright Act (DMCA), and the Technology, Education and Copyright Harmonization Act (TEACH Act).
3. Content posted to the LMS (Moodle, CANVAS, etc.) will be accessed only by students officially enrolled in the course and only for the duration of the course calendar.
4. No visitors, guests or public access is allowed in the online course environment.
5. Students will be informed that copyrighted materials are used in the course.
6. Course instructors will secure content within the LMS course so that materials are not able to be copied, downloaded, saved or transferred to other locations for future use.
7. Persistent Links will be utilized to embed content such as e-books, e-journal articles, or images from databases (Thiel Library can assist with this using authentication through proxy server access). In this way, the material is not copied since downloading the material is considered making a copy.
8. Ephemeral Recording Privilege: course instructors may store saved videos and materials they generate in the LMS or on a secure location such as an "Online Content Server" or drive created by Thiel's IT department.
9. Mediated Instruction Activities (MIA): The use of copyrighted materials posted to LMS will be controlled and supervised by the instructor corresponding to the type of use of the material that would occur in a live classroom setting. All materials used must be an integral part of the course experience. This rule excludes the posting of supplementary materials or suggested readings. This also limits the amount of materials used in online courses as opposed to the live classroom setting. Materials retained for the course may not be retained indefinitely for use and re-use, not even for the length of the semester.

Guidelines followed in creating this document:

The following guidelines are based on best practices and recommendations of the American Library Association (ALA) and the Association of College & Research Libraries (ACRL) using Section 107 (Fair Use) of the Copyright Law. If use of material extends beyond the above guidelines, the course instructor has the option to contact the copyright holder and ask for permission, usually the publisher or author/creator of the work.

The following apply to both Thiel Library owned materials not in electronic format and legally acquired personal or borrowed items in any format.

Scanned portion of a printed book (a book is a work by a single author):

- A chapter of a book (less than 10,000 words or 10 percent of the book, whichever is less)
 - o If this book chapter is illustrated, each illustration, picture, image, chart, graph, etc. is copyrighted individually. Limit of use is one picture, illustration, etc.
- A short story or a short essay (less than 2500 words) a short poem (less than 250 words), a chart, a graph, a diagram, or picture.

- Instructor must seek permission for use after one semester. Make sure the scanned material is "Read Only".
- Instructor should not exceed 9 instances of such postings during a semester.
- The limitations above exclude electronic materials, textbooks, and course packs specifically created for distance learning.

Scanned article from a printed journal:

- A single article from a periodical or newspaper, a short story, a short poem (less than 250 words), a chart, a diagram, a picture. Instructor must seek permission for use after one semester. Make sure the scanned material is "Read Only" (not printable, cannot be copied or downloaded). One work from a single author.
- If the journal article is illustrated, each illustration, picture, image, chart, graph, etc. is copyrighted individually. Course instructor is limited to use one picture, illustration, etc.
- Course instructor is limited to use one article from a journal. Permission is required if more than one article from the same journal is needed.
- Instructor should not exceed 9 instances of such postings during a semester.
- Using the same materials is limited to one semester only. In order to use the same materials in more than one semester course instructor should to ask for permission from the copyright holder.

Scanned pictures, images, illustrations, charts, graphs, etc.:

- One work from a single photographer, illustrator, etc. Permission is required if more than one picture, illustration, etc. from the same photographer, illustrator, etc. is needed.
- Instructors are limited to use one picture or illustration from a journal. Permission is required if more than one picture, illustration, etc. from the same journal is needed.
- Instructors should not exceed 9 instances of such postings during a semester.
- Using the same materials is limited to one semester only. In order to use the same materials in more than one semester course instructor should to ask for permission from the copyright holder.

Personal or borrowed items in print format:

- Use only legally acquired materials (not copies) and borrowed items from other libraries.
- Follow the above rules for amounts and time limit to use.
- Permission from copyright holders is required if the need is more than what has been stated in the rules.
- Instructor should not exceed 9 instances of such postings during a semester.

Texts, pictures, illustrations, images, charts, graphs, etc. originally in electronic format:

- **Library subscribed databases (e-books, e-journals, etc.):** Embed or create a persistent link (permalink) to an e-book, e-journal article, pictures (such as Encyclopedia Britannica), audiovisual materials in databases, etc. **Do not download the content in the LMS (this is an act of copying).**
- **Internet:** Embed or create a persistent link (permalink) to the website homepage. **Do not download the content in LMS (this is an act of copying).** If linking to a part of a website is desired, be sure to give full credit to the author/ creator of the website.

- **Personal or borrowed items in electronic format:** Use only legally acquired materials (not copies) and borrowed items from other libraries. Follow the above rules for amounts and time limit to use. Permission from copyright holders is required if the need is more than what has been stated in the rules.

Common Examples:

Textbooks:

Textbooks are books published with the intention they will be purchased. Copying textbooks means you are preventing the publishers from profiting on their product. Note that one of the factors of "Fair Use" is the effect of using copyrighted materials on the market. Excuses such as faculty did not order textbooks on time, or the cost of textbooks are too much for the students, etc., do not place copying textbooks under fair use and are often considered to be an illegal act.

Generally, do not make copies of textbooks for your students. You can place a legally purchased copy of the textbook (Review copies, Desk copies given for free to the faculty need permission from the publishers) on library reserve for your students to access for one semester. To keep the same textbook on reserve indefinitely, you likely need to obtain permission from the copyright holder.

DVDs owned by the Thiel Library/ Personal DVDs / DVDs borrowed from other libraries or sources (as long as they are originals and not homemade copies):

A short portion of the video can be digitized and streamed (if digital version is not available in the market) in order to be transmitted through LMS. Posting full-length programs is prohibited. In case of feature films (movies/fiction films), be sure that the clip does not give up the "heart" of the plot. The same applies to using DVDs/CDs in a Zoom, Microsoft Teams, Skype, etc. online meeting. You can play and share your screen with your students for a short clip of the audio/video program. **DO NOT** try to download the videos in LMS. Linking and embedding are similar; in linking, you are redirected to the video location. As such, you are not making a copy of the video. Downloading a video is an act of making a copy of the video, which may violate copyright law, unless you have the permission to do so.

Audio materials (CD/Audio DVD) owned by the Thiel College / Personal CDs / CDs borrowed from other libraries or sources (as long as they are originals and not homemade copies):

Instructor can use non-dramatic literary or musical works such as an audio-book, a poetry reading, songs, and music taken from audio CDs or audio DVDs in an amount comparable to that which is typically displayed in the course of a live classroom session. Dramatic literary or musical works such as plays, musicals, operas, etc. can be used in short clips (never complete works) taken from audio CDs or audio DVDs. Analog audio programs (such as audio cassettes) can be digitized and streamed as long as the digital version is not available.

AV materials on the web:

Instructor should check copyright status of the audiovisual material. If permitted, embed or create [persistent link \(permalink\)](#) to audio and video materials on the web. **Do not download AV materials on the web in LMS (this is an act of copying)**. If linking to a part of a website is desired, be sure to give full credit to the author/ creator of the website.

What about YouTube?

YouTube contains millions of videos. Some of them are copyright protected. Instructor should seek permission of author/creator before using YouTube videos.

Other copyrighted audiovisual materials:

Some textbooks contain a CD-ROM inside the book containing accompanying materials such as PDF files, PowerPoint files, videos, etc. Recently, more these materials reside on the publisher's website. One who purchases the book is given an access code to the accompanying materials. This is an individual access for the person who has bought the book. Never share these materials with others since this is considered an infringement of the copyright law unless the publisher clearly gives you permission to share or distribute the material. Never post these materials in LMS or other content management systems. Always contact the publisher and ask for permission if sharing the materials is needed.

Do the above guidelines apply to MOOCs and Instructor websites (visible to public):

Yes. Since these materials are visible to the public, course instructor should create original content and use public domain materials when possible, always giving attribution to sources.