

# Top Ten Copyright and Fair Use Questions

## Video Programs

**I currently use a variety of video programs in my face-to-face class. I understand we can use copyrighted materials in an online course, but in reading the information provided in this class, I am still not clear on the restrictions in the use of the videos. Would you please clarify?**

Pursuant to United States Code, Title 17, Section 110(1), members of the University of Central Florida community may publicly display and perform the copyrighted works of other people (this includes entire works) during face-to-face teaching activities, provided you are using a legitimate copy of the work, i.e. in this case a legitimate copy of the video (which, in general, does not include one that you have videotaped yourself from a broadcast). Section 110(1) does not authorize the copying of the copyrighted work from the original medium onto another medium though, which would be necessary in utilizing these materials in an online course.

For the copying of any copyrighted works, please refer to UCF's Use of Copyrighted Material Policy. As stated in the policy, United States Code, Title 17, Section 107 sets forth a four-pronged test to determine whether an intended use of a copyrighted work is fair (i.e. the Fair Use Doctrine). Because this test is highly subjective, it is difficult to know whether your application of the test will stand up in a court of law. For that reason, UCF has chosen to adopt certain guidelines (which can be found in UCF's Use of Copyrighted Material Policy), which include the guidelines applicable to this inquiry, i.e. the Fair Use Guidelines for Educational Multimedia.

The Fair Use Guidelines for Educational Multimedia apply here because, as stated in these guidelines, educators may perform and display their own educational multimedia projects for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as password or PIN) and provided further than the technology prevents the making of copies of copyrighted material.

According to Fair Use Guidelines for Educational Multimedia, motion media of up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated.

## **Should UCF employees rely on the TEACH Act?:**

Please note that compliance with the TEACH Act, i.e. United States Code, Title 17, Section 110(2) is VOLUNTARY. However, if one chooses to rely on the TEACH Act, one MUST follow the very stringent requirements, including extremely onerous technical requirements of the TEACH Act. Due to the extremely restrictive nature of the TEACH Act, the UCF General Counsel's Office prefers to rely on the traditional fair use principles instead. Please review

UCF's Use of Copyrighted Material Policy (and the various guidelines set forth therein) for further information.

## **Individual Images from Multiple Sources**

**May I incorporate individual photographs, charts or tables in a distance learning class taken from a variety of texts and resources that I have used as part of my regular classes?**

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work.

In accordance with the Fair Use Guidelines for Educational Multimedia, which can be found in UCF's Use of Copyrighted Material Policy, a photograph or illustration may be used in its entirety, but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project.

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project.

## **Graphics - Attributed Sources**

**I wish to use graphics in my online course that were copied from various websites. If the original source is given credit, is it OK to use these graphics?**

Please note that just because something is found on the internet does not mean it is not copyright protected. Educators and students should exercise caution in using material downloaded from the internet, because there is a mix of works protected by copyright and works in the public domain on the network. Some copyrighted works may have been posted to the internet without authorization of the copyright holder. Anytime an entire work is copied, the fair use defense will be difficult to apply. Crediting the source does not change the fact that this will likely be regarded as copyright infringement. Please keep in mind that crediting the source is appropriate; however, the underlying use needs to be justified first, whether the use relies on the permission of the copyright owner or on fair use. If the underlying use is infringing, crediting the source does not rectify this.

## **TEACH Act and Fair Use Online**

**The TEACH Act appears to be very restrictive. Does general Fair Use apply to the online environment?**

Yes, general Fair Use applies to the online environment as well. As stated above, compliance with the TEACH Act, i.e. United States Code, Title 17, Section 110(2) is VOLUNTARY. However, if one chooses to rely on the TEACH Act, one MUST follow the very stringent requirements, including extremely onerous technical requirements of the TEACH Act. Due to the extremely restrictive nature of the TEACH Act, the UCF General Counsel's Office prefers to rely on the traditional fair use principles instead. Please review UCF's Use of Copyrighted Material Policy (and the guidelines set forth therein) for further information.

## **Electronic Articles/Library Resources**

**As part of the resources to support my online class, I want to provide the students access to a variety of periodical articles, electronically. If I scan an article or download it from the web and place it in my online course for access solely by students taking my class, is this permissible?**

The copying of entire works, such as an entire article, is usually not justifiable as fair use. Per the Fair Use Guidelines for Educational Multimedia, which are incorporated into UCF's Use of Copyrighted Material Policy, for text material, up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project. However, if the article is available through the university's library holdings online, it would be permissible to provide the students with an online bibliography with links to these resources, making sure that on your course site you clearly indicate that the student is being taken to another site that is not part of your actual online course.

## **Intellectual Property, Copyright and Work for Hire**

**I am in the process of completing the creation of an online course. There has been an expectation, by the university, that I periodically publish works, which I have and for which I do hold copyright. Would I be entitled to copyright for the course I have developed?**

Per UCF policy, the faculty member owns the intellectual content of the course but UCF owns the actual course and copyright to the course. For example, pursuant to the UCF Collective Bargaining Agreement Article 18.3(b), "a work that is created with the use of University Support (e.g. the use of University funds, personnel, facilities, equipment, materials, or technological information) is the property of the University..., e.g. ITV or Web-based courses developed with University resources use a team of technical support experts and faculty to develop materials and software used in the course. Accordingly, the University maintains the right of ownership to such software and materials."

## Music

**In my face-to-face classes, I often use music, played from the original, copyrighted source, i.e., CD, tape etc., to either set a mood or to establish a feeling for a certain period of study. Would this be permissible for an online course that I am teaching this semester?**

Per the Fair Use Guidelines for Educational Multimedia, which are incorporated into UCF's Use of Copyrighted Material Policy, for music, lyrics, and music video, up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as part of an educational multimedia project.

## Linking to Websites

**In preparing an online course, I would like to provide links to course websites authored by other professors, which cover aspects of my course in more detail. Do I need to reference these sites or obtain permission from the individual professors to include in my course?**

If your intent is to link to another professor's course site, you should first obtain permission from the professor and the professor's institution. Although there may be some limited use of the sites permitted from a copyright perspective, these courses were designed for students enrolled in those courses. Even if you were directing students to more generic sites or sites not tied in with an online course, best practice would be to ensure that the website has either published a policy which permits linking to the website or you should otherwise obtain prior permission since you are organizing activities around those sites.

## Clip Art Libraries

**I would like to include a number of graphic images in my class, obtained from various clip art libraries owned by the university. Since we already own such libraries, is there any problem with using the clip art on our restricted access network?**

In general, clip art that is owned by the institution is licensed for multiple format applications and most probably may be used in various forms of presentations, including distance learning on a restricted access network. However, one should verify that the license provides no restrictions on such use. Many clip art libraries preceded the development of the Internet and online services and even though the wording in their licenses often appear to be very open ended in how the clip art may be used, one must keep in mind that reproducing the clip art digitally and transmitting that clip art adds a different dimension to the extent of publication. To be perfectly safe,

obtaining clarification, from the copyright holder, concerning use of the clip art in the electronic environment, would solidify one's position.

## **Using content semester to semester**

**Considering the amount of time I am spending to create the course, how may I incorporate copyrighted content, yet continue to use this content semester to semester?**

Per the Fair Use Guidelines for Educational Multimedia, which are incorporated into UCF's Use of Copyrighted Material Policy, educators may use their educational multimedia projects created for educational purposes for a period of up to two years after the first instructional use with a class. Use beyond that time period requires permission for each copyrighted portion incorporated in the production. Also, educators should be reminded to credit the sources and display the copyright ownership information, which includes the copyright notice ©, year of first publication and name of the copyright holder. Prior to engaging in any use that exceeds the use described in the guidelines, you should obtain the prior written permission of each copyright holder of the materials you would like to use. Also, you should seek permissions (licenses) for all copyrighted works in your educational multimedia projects prior to engaging in any type of commercial use.

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