

## Streaming films in distance education: Copyright Law

Stelian Grigoras, Alice Parsons  
Northwood University, Midland Michigan



## Outline

- Basic Copyright Concepts
- Lawyers and faculty needs
- Fair Use Act
- TEACH Act
- Dramatic and Non-dramatic work
- The Role of the Institution, Faculty, IT, Library
- Clearinghouses for Licensing



This presentation  
does not constitute  
legal advice.



## Basic Copyright Concepts

A copyright is a legal right of an author of a literary, musical or artistic work to prevent other persons from copying the author's work without permission.

Generally, a copyright will exist for a period equal to the life of the author plus 70 years, or 95 years from first publication for an anonymous work or a work made for hire.



## Basic Copyright Concepts

- Protects original works of authorship fixed in any tangible medium of expression. Does not extend to an idea, concept, or principle.
- Author has exclusive rights to reproduce, distribute, display, and perform the work and to prepare derivative works based upon the copyrighted works.
- Registration of copyright is optional.
  - \$30 fee
  - Must be filed prior to filing infringement lawsuit
  - Make you eligible to receive attorney's fees and statutory damages in a future lawsuit



## The Question Addressed Today

- Are educators allowed to include movies in an online course under United States Copyright Act?

We asked the lawyers and looked at the relevant documents.



## Conservative Approach

- Permitted to show full length movies in face-to-face classroom settings, BUT
- Not permitted to upload those same movies for online courses
- BECAUSE:
  - The TEACH Act restricts displaying full length dramatic works online to reasonable and limited portions



## WHAT WORKS ARE PROTECTED?

Copyrightable works include:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works



## FAIR USE

Fair use is a concept embedded in U.S. law that recognizes that certain uses of copyright-protected works do not require permission from the copyright holder.  
(See [Title 17, section 107](#))



## FAIR USE

The following four factors are used to determine if a use is fair:

- The **PURPOSE** of the use (e.g. commercial vs. educational)
- The **NATURE** of the copyrighted work
- The **AMOUNT** of the material used
- The **EFFECT** of use on the potential market or value of the work



## What the law says: TEACH Act

- “Technology, Education and Copyright Harmonization Act” (TEACH Act), signed by President Bush on November 2, 2002
- Facilitates and enables performance and display of copyrighted materials for distance education
- In exchange for unprecedented access to copyrighted material, TEACH Act requires academic institutions to meet certain requirements



## What the law says: TEACH Act

- Provides for legal performance and display of some resources in online education
- Previous laws allowed the reproduction of copyrighted materials for educational purposes only in the context of “face-to-face” teaching.



## TEACH Act Requirements

- The institution must be an accredited, non-profit educational institution.
- Use must be:
  - part of mediated instructional activities.
  - limited to a specific number of students enrolled in a specific class.
  - either for 'live' or asynchronous class sessions.



## TEACH Act Requirements cont.

- Use must NOT include:
  - the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses.
  - performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act.
- Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used.



## TEACH Act Requirements cont.

- The institution must:
  - have developed and publicized its copyright policies
    - informing students that course content may be copyrighted.
    - include a notice of copyright on the online materials.
  - implement some technological measures to ensure compliance with these policies, beyond merely assigning a password.



## What Are We Allowed To Use In Distance Classrooms?

- YES:
  - Complete versions of non-dramatic literary or musical works may be performed.
- YES:
  - reasonable and limited portions of any other copyrighted work, or display of a work, in an amount comparable to that which is typically displayed in the course of a live classroom session



# IF

**the performance or display meets the TEACH Act criteria.**



## TEACH Act Criteria / Blackboard™

- Use of copyrighted materials must be under the supervision and control of a faculty member.
- The materials used must be relevant to the course.
- Only students enrolled in the course can have access to the copyrighted materials, not guests or observers.



## Dramatic Movies -reasonable and limited portions

- An entire movie is likely not permissible, without buying a license
- Teach Act permits the performance of a reasonable and limited portion of films in an online classroom.
- The work performed or displayed must be:
  - An integral part of the class session as determined by the instructor.
  - Part of a systematic mediated instructional activity.
  - Directly related and of material assistance to the content of the course.



## Criteria for Using Copyrighted Material

- Copyrighted materials should not be copied and redistributed to others.
- If the copyrighted materials have their own copyright protections built in, users of those materials should not attempt to interfere with those protections.

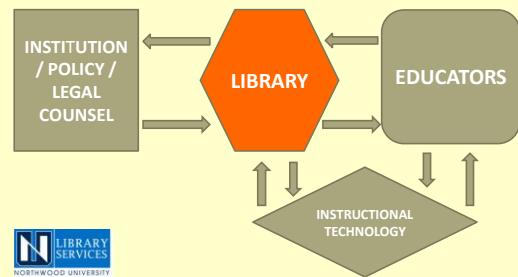


## Criteria for Using Copyrighted Material

- Institution is responsible for educating faculty, students, and staff regarding copyright law.
- The copyrighted material should not be available to students after the class session or course is complete.



## Coordination in the University Environment



## Role of the Library

- Participate in the development of copyright policy
- Prepare and gather copyright information materials for the university community
- May retain copies of distance-education transmissions in Library collection



## The Role of the Library

- Negotiate licenses for databases and other materials
- Offer alternative access to content that cannot be included lawfully in the distance-education programming
- Many materials used in distance education will come from the library collections
- Assist in obtaining permissions/licenses for copyrighted materials



## Role of the Library

- Interpret and apply Fair Use to situations and needs not encompassed by TEACH Act
- Research and track developments related to the TEACH Act

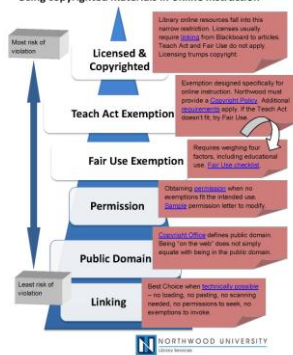


## ALTERNATIVE TO THE TEACH ACT

- When TEACH Act doesn't cover use of streaming video:
  - Determine if use may be exempted under the "FAIR USE" provisions of the Copyright Act
  - Seek license from copyright holder



### Using copyrighted materials in online instruction



## Options for Acquiring Films

- Public domain
- Obtain a release
- Purchase a copyright
- Open Access
- License or pay a copyright fee



## CREATIVE COMMONS

- is a non-profit that offers an alternative to full copyright.
- refers to a way of assigning a particular type of copyright license to your creative work or intellectual property, so that other people can legally reuse it, but within certain guidelines which you specify.



## LICENSING

- Proprietary database, e.g. Films on Demand
- Copyright Clearance Center (CCC)
- SWANK or other commercial film clearinghouses



## Clearinghouses for Licensing

- SWANK  
<http://www.swank.com/digitalCampus/index.html>
- MPLC Umbrella License  
<http://www.mplc.org/>
- Criterionpicusa  
[http://www.criterionpicusa.com/CPLUSA/lcl\\_about\\_us.html](http://www.criterionpicusa.com/CPLUSA/lcl_about_us.html)



## SWANK

**Digital Campus** by Swank Motion Pictures, Inc.® allows students the flexibility to legally view course-assigned films outside the classroom by licensing and distributing films through learning management systems such as Blackboard. Select and pay only for the films needed by a course or an institution from thousands of films.



## SWANK

- Licensing based on 2 factors (not # students):
  - Have to be part of a class
  - # of films to be licensed (min. 1)
- Admin portal allows user to:
  - Create lesson plan
  - Timestamp film with teacher's annotations added



## SWANK: Cost of Licensing

No restrictions to the number of faculty who can use the film as part of their course curriculum once it has been licensed.

Cost for one title:

**Month** Agreement: \$106

**Semester** Agreement: \$ 125

**Year** Agreement: \$186



## CONCLUSIONS

Need to use a movie in your online class?

- ✓ If not in public domain
- ✓ If Library already has a license or if they can't provide an alternate method for delivering resource -

1. Implement TEACH Act
  - use “reasonable and limited” portions
  - limited time, only registered students, copyright infringements warnings
2. Consider Fair Use
3. Secure permission via a release or a license



## COPYRIGHT RESOURCES

You are welcome to use the Northwood [Copyright in Education](http://northwood.libguides.com/copyright) LibGuide as a copyright resource.

<http://northwood.libguides.com/copyright>

DON'T FORGET TO PICK UP YOUR  
HANDOUTS



# QUESTIONS?



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