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.

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.

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
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

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
- MPLC Umbrella License
- 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 LibGuide as a copyright resource.
[http://northwood.libguides.com/copyright](http://northwood.libguides.com/copyright)

DON’T FORGET TO PICK UP YOUR HANDOUTS
QUESTIONS?

REFERENCES CITED

