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# Copyright and Your Blackboard Courses

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UMKC Copyright Team members:  
Cindy Thompson, Nara Newcomer

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# Today's Topics

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- Fair Use – Myth and Reality (Cindy Thompson)
- Streaming Media – Especially Video (Nara Newcomer)
- Your questions!



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UMKC Libraries



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# Disclaimer: We are not lawyers

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Nothing in this presentation or slides is to be construed as legal advice.

This presentation and slides are intended to provide information and guidance in the application of copyright law and to expand on the University of Missouri System Collected [Rules and Regulations](#).

The UMKC Copyright Team is happy to provide information and suggestions, but does not provide legal advice.

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# **Fair Use: Myth and Reality**

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Cindy Thompson

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# Myth or Reality?



Educational Use = Exempt

Educational Use = Fair Use

1 chapter = Fair Use

1 article = Fair Use

1 semester = Fair Use

# Copyright – Exclusive Rights

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## 17 U.S. Code § 106

the **owner of copyright** under this title has the **exclusive rights** to do and to authorize any of the following:

- (1) to **reproduce** the copyrighted work in copies or phonorecords;
  - (2) to **prepare derivative works** based upon the copyrighted work;
  - (3) to **distribute copies** or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
  - (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, **to perform the copyrighted work publicly**;
  - (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, **to display the copyrighted work publicly**; and
  - (6) in the case of sound recordings, to **perform the copyrighted work publicly by means of a digital audio transmission**
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# Copyright – Exclusive Rights

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(1) to **reproduce**

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(4)

**to perform the copyrighted work publicly;**

(5)

**to display the copyrighted work publicly; and**

(6)

**to perform the copyrighted work publicly by means**

**of a digital audio transmission**

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# When do I consider copyright?

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Always!

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# Remember Actual v. Statutory Damages

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- 17 USC § 504(c)(2)
  - Actual Damages and Profits, or
  - In the case of willful infringement up to \$150,000 in statutory damages
  - However . . . “the court shall remit statutory damages in any case where an infringer believed and ***had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107 [“fair use”]***, if the infringer was: (i) an ***employee or agent of a nonprofit educational institution***, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords . . . .”
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# Fair Use - The Law

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## 17 U.S. Code § 107

. . . The fair use of a copyrighted work, including such use by reproduction in copies . . . *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.
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# When should I apply Fair Use?

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## First ask:

- Is it copyrighted?

There are some [great tools](#) to [help](#) you determine this

- Is it easy just to get permission - or do I already have it?

Do you or a colleague own the copyright (a [tricky proposition](#))?

Is there a readily available license? (like [Creative Commons](#))

Do I really need to make a copy (maybe you can [link](#) instead)?

- Was it legally obtained?

Consider the source: purchased, your copy/scan, our copy/scan, borrowed from another library, etc.

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# How can I apply Fair Use?

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Fair Use Checklist: <http://library.umkc.edu/lturl/fair-use>

## When to use:

When you use copyrighted material for any reason

Every semester, every time

Including when you post material online for your classes

## How to use it:

1. Go through each item - consider carefully, annotate

Get help: [copyright@umkc.edu](mailto:copyright@umkc.edu)

2. Reflect on the list as a whole

Does it seem like a convincing argument?

3. Keep it on file

At least three years

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# Purpose

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**Purpose:** *The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes*

## Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research or scholarship
- Nonprofit educational institution
- Criticism or comment
- News reporting
- Parody
- Transformative use

## Opposing Fair Use

- Entertainment/Public Performance
  - Commercial activity
  - Profiting from the use
  - Denying credit to original author
  - Bad-faith behavior
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# Nature

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**Nature:** *The nature of the copyrighted work; (fiction/creative or nonfiction/factual)*

## **Favoring Fair Use**

- Published work
- Factual or nonfiction based
- Important to educational objectives

## **Opposing Fair Use**

- Unpublished work
  - Fiction
  - Highly creative work (art, music, novels, films, plays)
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# Amount

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**Amount:** *Amount and substantiality of the portion used in relation to the copyrighted work as a whole*

## **Favoring Fair Use**

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for educational purpose

## **Opposing Fair Use**

- Large portion or whole work used
  - Portion used is central to or “heart of the work”
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# Effect

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**Effect:** *The effect of the use upon the potential market for or value of the copyrighted work*

## **Favoring Fair Use**

- Restricted access
- One or few copies made
- User owns lawfully purchased or acquired copy of original work
- Lack of licensing mechanism for digital excerpt

## **Opposing Fair Use**

- Making content publicly available
  - Numerous copies made
  - Could replace sale of copyrighted work
  - Affordable permission or reasonably available licensing mechanism available
  - Repeated or long-term use
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# Streaming Media (especially video)

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Nara Newcomer

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# Streaming Media: Can you use it?

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1. Is it already available online?
    - a. From the library
    - b. On the general web
    - c. Readily available for licensing
  2. Does the TEACH Act or fair use apply?
  3. Can you obtain a license or permission?
    - a. Through the library
    - b. Contact rights owner yourself
    - c. Students purchase individual licenses
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# Library assistance

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Available for all aspects of streaming media!

UMKC Copyright Team: [copyright@umkc.edu](mailto:copyright@umkc.edu)

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# 1. Is it already available online?

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- Via Library – search [library catalog](#)
    - Example: Tall as the Baobab Tree
    - Create and post links: instructions  
<http://libguides.library.umkc.edu/linking>
  - Via general web
    - Example: Der Ewige Jude <https://archive.org/details/1940-Der-Ewige-Jude>
    - Example: Locked Out  
<https://www.youtube.com/watch?v=okgfgxGgw6Q>
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# Readily available for licensing?

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- Kanopy
    - Activated by library upon instructor request
  - Digital Campus (Swank)
    - Activated by library upon instructor request
  - General web
    - Students purchase their own licenses
    - Amazon Instant Video, Vimeo, Hulu, etc.
    - <http://www.canistream.it/> - quickly checks many sites, but if no hits, investigate sites individually – often misses content
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## 2. Does the TEACH Act or fair use apply?

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- [TEACH Act](#)
  - Fair Use - follow the [Fair Use Checklist](#)
  - [Reserves, Blackboard, and Coursepacks](#)
  - Digital Millennium Copyright Act (DMCA)
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# TEACH Act

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Covers:

performance and display in online teaching (digital transmissions)

distinctions between dramatic and nondramatic works (partial or full performances)

[Copyright Guide - TEACH Act](#)

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# Fair Use

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- Fair Use Checklist
  - Four factors:
    - purpose and character of use
    - nature of copyrighted work
    - amount and substantiality of the portion
    - effect upon the potential market
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# TEACH Act 2002

# Fair Use

Firm boundaries

Many requirements

Safer

[Copyright Guide - TEACH Act](#)

Vague factors

No requirements-  
open to anyone

Riskier

# Shift toward Fair Use in Online Teaching

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“Referencing the TEACH Act, after so many years, as the TEACH Act has actually become misleading at this point. It is more accurate, when considering whether or not to transmit performances and displays of copyrighted materials - such as those used in online courses - to assess the options as follows:

1. Is permission required from the copyright holder?
2. Does the proposed use constitute a fair use as outlined in Section 107 of the Copyright Act? *or*
2. Does the proposed use fit within the transmission performance and display exception (Section 110(2)) of the Copyright Act?”

--North Carolina State University

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# Digital Millennium Copyright Act (DMCA)

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- [DMCA info](#)
  - 1998 copyright act. Reviewed every 3 years. Next in 2018.
  - Illegal to circumvent TPMs
  - But – special, limited exemptions for teaching
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# DMCA - screen capture permitted

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WHAT: Motion pictures or online services

FOR: criticism or commentary

AMOUNT: small portions

PERMITTED USES:

(i) in noncommercial videos;

(ii) in documentary films;

(iii) in nonfiction multimedia ebooks offering film analysis;

(iv) for educational purposes by college and university faculty, college and university students, and kindergarten through 12<sup>th</sup> grade educators.

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# DMCA - breaking TPMs

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Allowed for:

film studies or other courses requiring close analysis of film and media excerpts...

by college and university faculty, college and university students, and kindergarten – 12<sup>th</sup> grade educators.

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# Screen Capture Software Options

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## UMKC-approved options:

Camtasia

Panopto

Kaltura

Office Mix

Adobe Presenter

VoiceThread

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# Conflict Arise

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When TEACH Act or Fair Use says *GO*

but the DMCA says *NO*

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### 3. Can you obtain a license or permission?

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- Library investigates and may pay
  - You can contact the producer (most likely to work with small, independent filmmakers)
  - Students purchase their own licenses as course materials
    - Amazon Instant Video, Vimeo, Hulu, etc.
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# Request permission (Blackboard streaming to course only)

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Dear [filmmaker]:

I'm a faculty member in the [department] at the University of Missouri-Kansas City and would like to use your film [name of film] in my class [name of class.] [1-3 sentences about your class, why the film is a perfect fit, your planned use, and praise regarding the film.] I'd like permission to make [name of film] available to my students via online streaming. It will only be available to students in my course, for the duration of the course. Thank you for your consideration!

[Signature]

*Sample possible outline-not an official/approved template*

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## When all else fails....

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- Choose another video
  - Adapt your use so it falls within fair use or the TEACH act
  - Face-to-face courses: show in class or put on library reserve
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# Tools for Faculty: media licensing

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## Digital Campus (Swank)

Activated by library upon instructor request

## Kanopy

Activated by library upon instructor request

## Streaming Databases

Open to all UMKC from library catalog

## Individual Titles

Acquired upon request

## Students purchase as course materials

Netflix, Amazon Instant Video, Hulu, etc.

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# Tools for Faculty: library assistance

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To make requests: [copyright@umkc.edu](mailto:copyright@umkc.edu)

## Tips for requests:

Tell us what you need and what is your intended use

If for class, information on class size and type (in-person vs. online), and whether it is required viewing

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# UMKC Copyright Support Team

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**Contact us:**  
**copyright@umkc.edu**

**Paul Callister**, Director  
Leon E. Bloch Law Library

**Brenda Dingley**, Director, Scholarly Communications  
University Libraries

**Chris Le Beau**, Assistant Teaching Professor, University of  
Missouri & Business Librarian, Miller Nichols Library, University  
Libraries

<http://library.umkc.edu/copyright>

**Nara Newcomer**, Head of Music/Media Library  
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**Cindy Thompson**, Director of Public Services  
Miller Nichols Library, University Libraries

**Marie Thompson**, Dental Librarian  
Dental Library, University Libraries

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# Your questions!

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Ask more at: [copyright@umkc.edu](mailto:copyright@umkc.edu)

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