**Fair Use of Original Works – A Quick Guide**

[Copyright](https://copyright.gov/what-is-copyright/) is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression. Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. [Section 107 of the Copyright Act](http://www.copyright.gov/title17/92chap1.html#107) provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use.  Four factors are used in evaluating fair use:

1. *Purpose and character of the use*, including whether the use is of a commercial nature or is for nonprofit educational purposes.
   1. Nonprofit educational and noncommercial uses are more likely to be considered fair.
   2. “Transformative” uses are more likely to be considered fair which are those that add something new, with a further purpose or different character, and do not substitute for the original use. For useful examples on transformative use, read [*Measuring Fair Use: The Four Factors*](https://fairuse.stanford.edu/overview/fair-use/four-factors/) produced by Stanford Libraries.
2. *Nature of the work* which analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression.
   1. Using a more creative work such as a novel, movie, or song is less likely to support a claim of a fair use than using a factual work such as a technical article or news item.
3. *Amount and substantiality of the portion used in relation to the work as a whole* which considered the quantity and quality of the material that was used.
   1. Length matters. The more pages the greater the risk of infringement. The longer the audio/video, the greater the risk. Short snippets are generally protected.
4. *Effect upon the value of the work* which considers if the use harms the market for the original work.

Broadly, faculty may incorporate original works into their own educational multimedia projects in support of curriculum-based instructional activities at educational institutions. Likewise, students may incorporate original works in their own educational multimedia projects for a specific class. However, the purpose, nature, amount, and effect of the use would all be considered if the original creator questioned the use within the class.

Audio (music, podcasts, etc.) and video (movies, television programs, etc.) are media often used within classes, and when considering fair use of these media, the Copyright Act should be considered in conjunction with the [TEACH Act](https://www.copyright.gov/docs/regstat031301.html). Based on these Acts, here are guidelines around the use of creative video within classes:

* The TEACH Act allows for the use of all copyrighted materials in distance education in ways that are analogous to their use in a physical classroom.
  + It specifically allows “display of a work in an amount comparable to that which is typically displayed in the class of a live classroom session.”
  + It requires transmission be made "by or at the direction of an instructor as an integral part of a class session."
* In sum, the work must be used as an integral part of an in-person or virtual class experience and must be controlled by the instructor. For virtual classes, this includes that the work is only accessible through the online class LMS or through an authorized link by the copyright holder, and that it is not downloadable.
* Link to the work if possible, rather than making an electronic copy available.
* The use of multiple works and full works is generally not allowed, but if employed must be directly tied to specific learning outcomes.
* When numerous works are needed to address a learning outcome, small portions of each work should be used.
* Do not use more of a work than needed to serve a learning outcome.
* Make sure the work serves a pedagogical purpose and is not used as entertainment.
* Place the work in the context of the class, explaining why it was chosen and what it was intended to illustrate.
* Recontextualize the work through the addition of background readings, study questions, commentary, criticism, annotation, and student reactions.
* Limit access to the work to students enrolled in the class.
* Provide attributions to known owners of the work.
* Ensure the work is fully accessible, including that videos have both captions and audio descriptions regardless of the accessibility features of the original work.

This page is intended as a quick guide for faculty considering use of original works within their classes; however, below is a list of comprehensive resources which can be referenced if uncertainty remains. Additionally, those seeking guidance on a specific question can email Director of Faculty Affairs Sam Jay at [sjay@msudenver.edu](mailto:sjay@msudenver.edu).

[Fair Use - Wikipedia](https://en.wikipedia.org/wiki/Fair_use)

[TEACHing From a Distance and Copyright Considerations – Library of Congress](https://blogs.loc.gov/copyright/2020/03/teaching-from-a-distance-and-copyright-considerations/)

[U.S. Copyright Office Fair Use Index](https://www.copyright.gov/fair-use/)

[Stanford Copyright and Fair Use Center](http://fairuse.stanford.edu/)