

© ISSUES WITH ONLINE TEACHING

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Copyright Librarian

OVERVIEW OF THIS TALK



Quick © & Open Access Basics



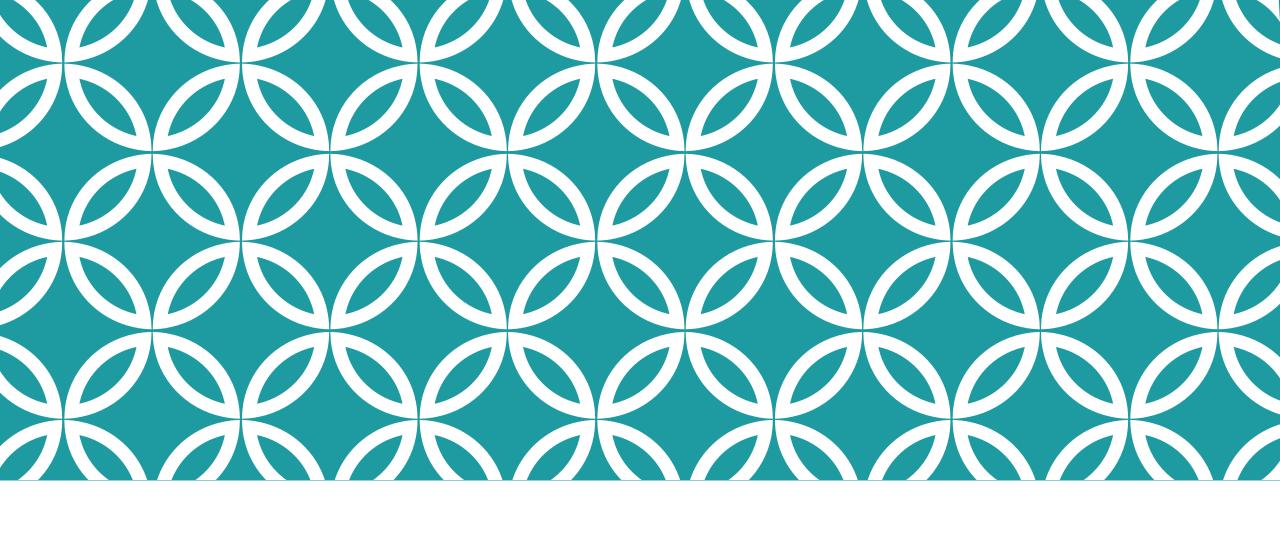
Face-to-Face Teaching Exception



Fair Use (Then & Now)



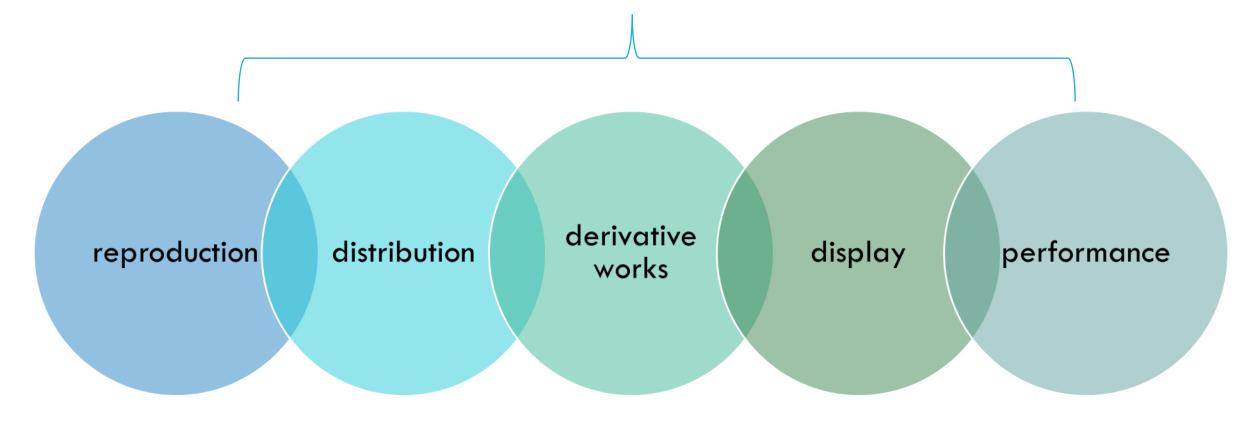
The DMCA & Streaming Videos



QUICK © & OPEN ACCESS BASICS



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© exceptions



fair use



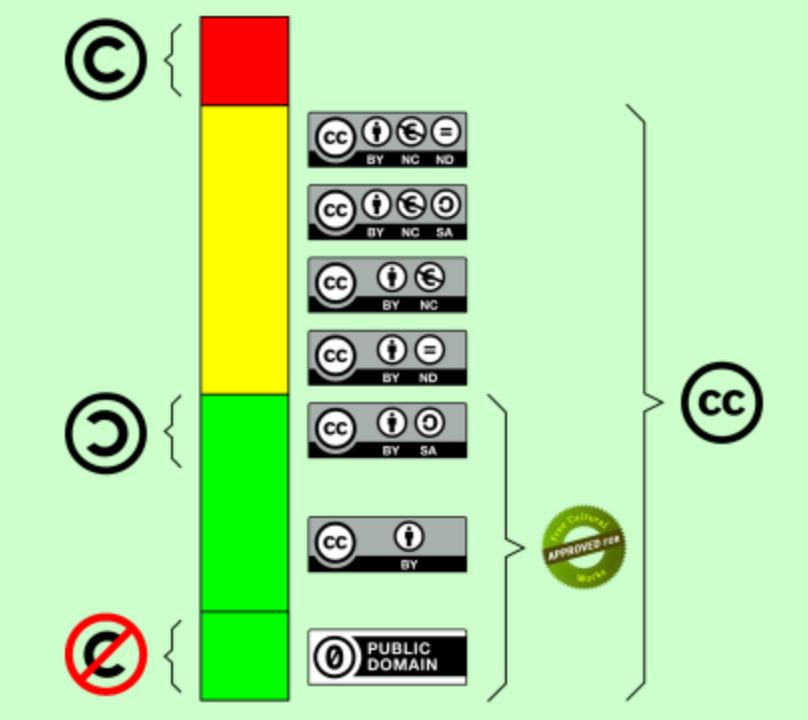
asking for permission

Published in the United States
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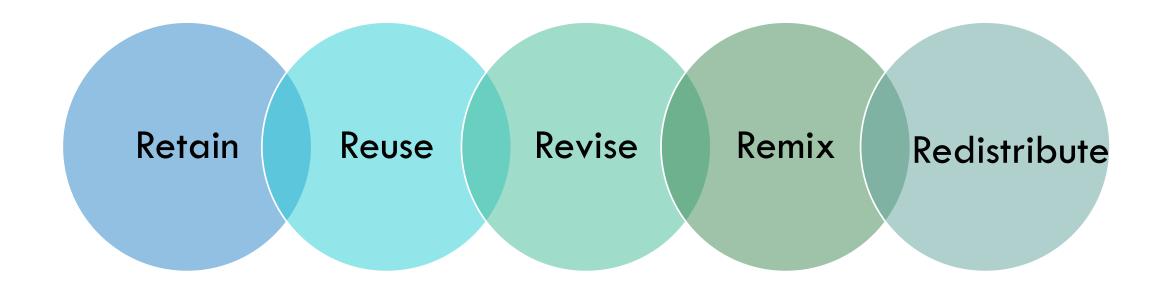


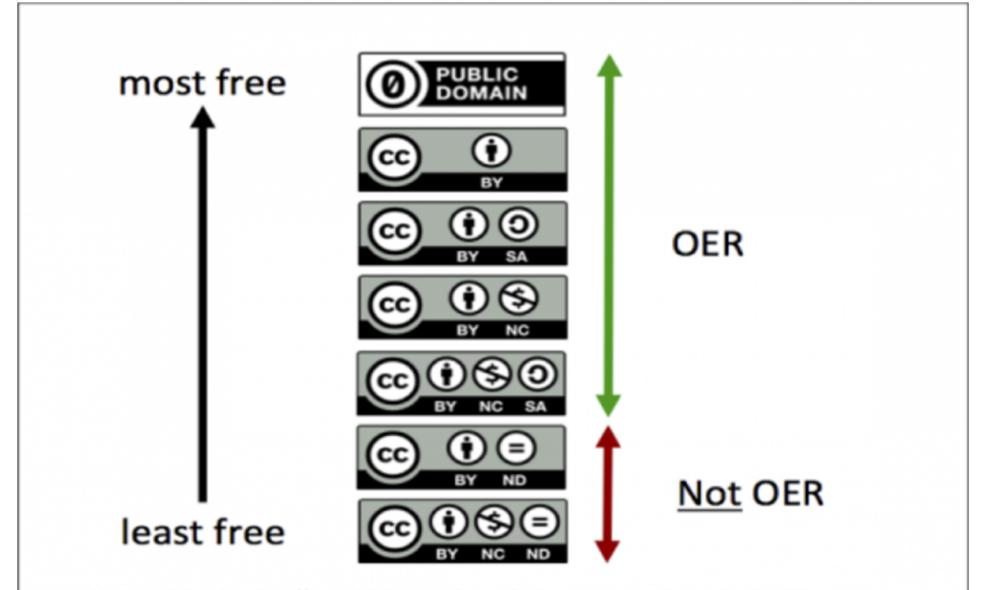


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Search engine for OER materials across multiple websites

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Index of full length open textbooks 60% are peer reviewed Authors affiliated with a higher education institution, scholarly society, or professional organization

Merlot

Repository of teaching materials
All content reviewed, many include more
extensive peer review



FACE TO FACE TEACHING EXCEPTION



Section 110(1)

- Dísplay
 (not copy)
- · Any Work (legal copy)
- Classroom
 (not public performance)



Online: TEACH Act Sections 110(2) & 112(f)

The rules for the TEACH Act are quite burdensome and less broad than Section 110(1)

Many Universities do not follow the rules as some of the preliminary requirements include:

The institution maintains policies on copyright (with education to faculty, students, and staff) as well as notice to students that materials used in connection with the course may be subject to copyright

&

For digital transmissions, includes technical control measures so that the work cannot be retained longer than the class session; the work cannot be further transmitted to others; and does not interfere with technological measures used by © owners (technical locks).



Online: TEACH Act Sections 110(2) & 112(f)

The rules for the TEACH Act are quite burdensome and less broad than Section 110(1)

Works displayed must be "as an integral part of a class session offered as a regular part" of the institution's "mediated instructional activities." And the use must be "directly related and of material assistance to the teaching content"

You can perform as much as you want of a "nondramatic literary or musical work" (poems and songs are OK, but not plays or operas!), "or reasonable and limited portions of any other work" with the amount being what would be "typically displayed in the course of a live classroom session." So, although you might show a whole movie over several days in a classroom, the law assumes only a fairly short portion of a movie (or play). The same would be true of a sound recording—use only what you need to teach the particular class.

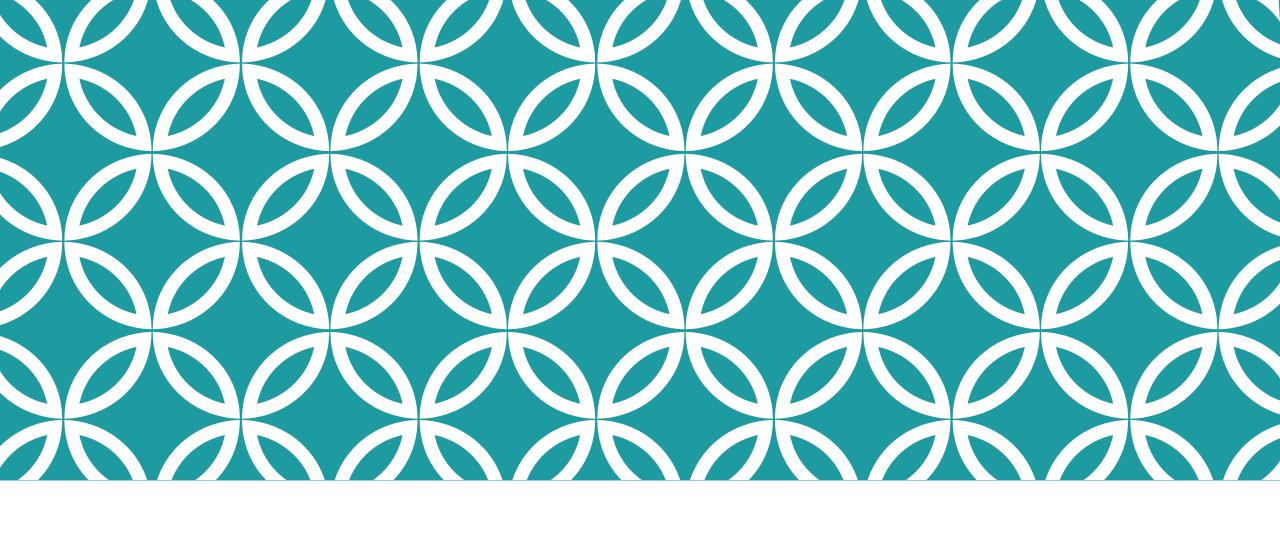
Holland Gormley, TEACHing From a Distance and Copyright Considerations, Copyright Creativity at Work, US Copyright Office Blog, https://blogs.loc.gov/copyright/.

For more on the TEACH Act:

Chapter 10 of Copyright Conversations: Rights Literacy in a Digital World (ACRL 2019), Online Classrooms: Is the TEACH Act Enough? by Carla S. Myers

See Peggy Hoon's Teach Act Toolkit from LSU:

https://www.lib.lsu.edu/services/copyright/teach/index



FAIR USE

108 110(1) Fair Use 110(2)



Limitation of Liability:
Section
504(c)(2)

17 U.S.C. Section 504(c)(2):

"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 ... if the infringer was:

an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who . . . infringed by reproducing the work in copies or phonorecords"

"Fair Use is made for just these types of contingencies."

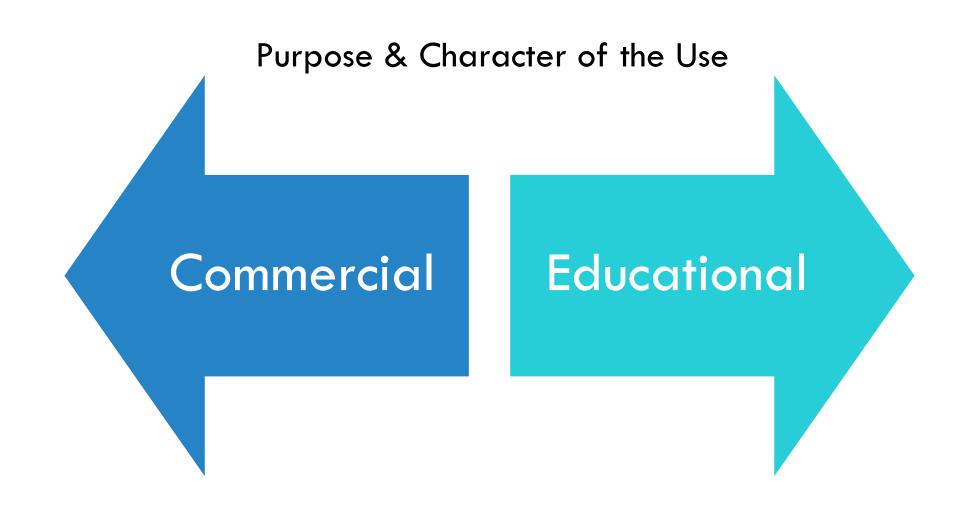
- April Hathcock

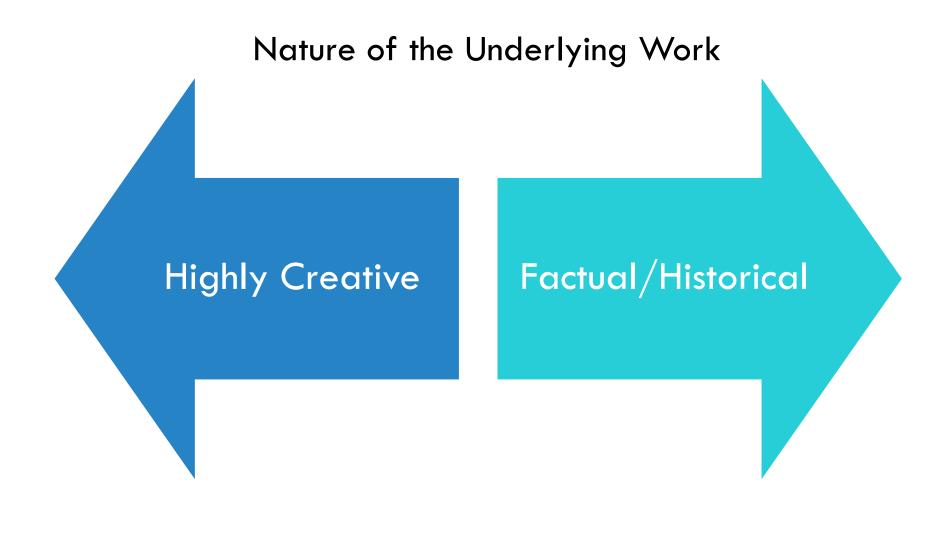
Favored purposes of fair use (as noted in the preamble to the statute) include:

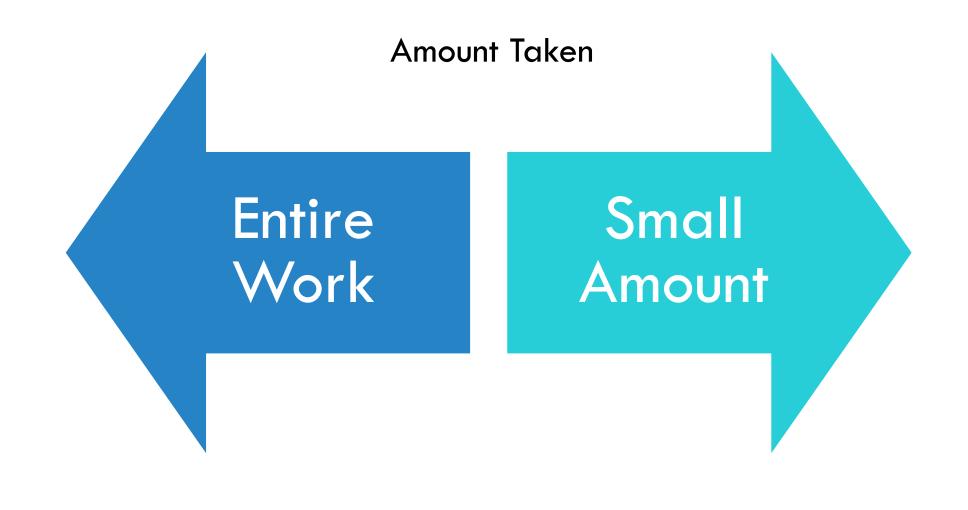
EDUCATION, RESEARCH & SCHOLARSHIP

A group of copyright librarians, including myself, drafted a Statement about Fair Use & Emergency Remote Teaching & Research, available here: https://tinyurl.com/tvnty3a









Effect on Potential Market Value

Replaces Market Value Different
Market/No
Market Impact



DMCA & STREAMING VIDEO

DMCA

Prevents breaking technical locks on DVDs for streaming videos.

This would be a separate violation in addition to the copyright violation!

Luckily, there are some exemptions from the DMCA, promulgated by the US Copyright Office, but they are rather limiting for teaching with videos.

DMCA TEACHING EXEMPTION

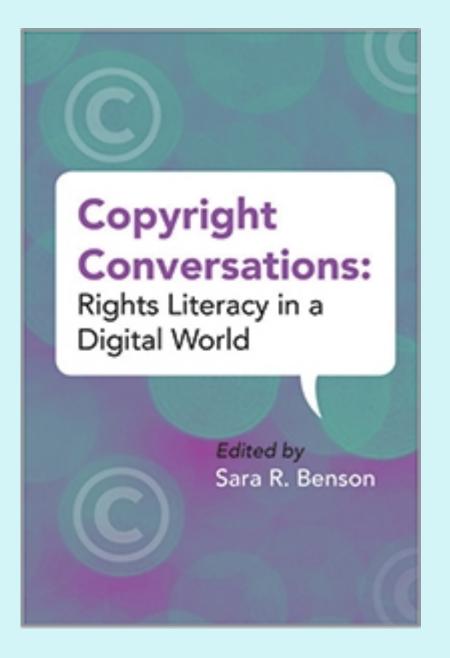
"Unfortunately, the current exemptions extend only to copying 'short portions' of motion pictures for use in certain types of teaching, not to copying entire works, even when doing so is clearly fair use."

For more on the current exemption to the DMCA, see Sara Benson, The Copyright Implications for Teaching with Videos on CopyrightLaws.com, available at: https://www.copyrightlaws.com/copyright-implications-teaching-with-videos/

WHAT ABOUT FAIR USE?

"Courts disagree on whether circumvention violates the DMCA when the underlying use is non-infringing (for example, because of fair use) and on what constitutes circumvention. Individual institutions will need to make their own assessments of this issue in consultation with their legal counsel or administration."

One thought: If the film is not available on streaming platforms, it is squarely not competing with market value to stream it. In that case, the only issue is the DMCA (if there is a technical lock) and your institution might find this to be an acceptable level of legal risk.



"The meaning of copyright reveals itself in the choices we make, and this book is essentially about those decisions."

—from the Foreword by Kenneth D. Crews

Topics include:

- Advocacy and education for open access policies on campus
- Fair use
- Copyright education with and around the Framework for Information Literacy in Higher Education
- The TEACH Act
- One-shot copyright instruction
- Risk assessment and management for copyright queries
- Law and literacy for non-consumptive text mining
- Strategies for U.S. orphan works
- The international copyright regime

Available now through the ALA Store!



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