A frequent question for educators is how to use video material in the classroom. The answer can become quite complex, and some individuals may feel the final decision to use media resources in the classroom is very much open to interpretation. However, the core portions of the law are quite clear. In addition, a second line of questions revolves around duplication of the media. This document provides some general principles and best practices which focus on how you can use video in face-to-face teaching, on-line situations, and what you can or cannot duplicate.

**Face-to-Face Instruction**

**Playing a video program**

You may claim Fair Use to use video programs for your face-to-face class use, under Section 107 of U.S. Copyright Law. Section 17 U.S.C. § 110(1) permits “the performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction....” This applies to the showing of the entire film, or merely clips from it. This provision only applies to face-to-face instruction, and not to distance education situations like on-line learning through a learning management system, e.g. Desire2Learn.

Generally for face-to-face situations, the actual showing of the program must be:

- a regular part of systematic instructional activities
- in a nonprofit educational institution
- in a classroom or similar place devoted to instruction
- the copy used must be lawfully made
- instructional activity must be taking place
- use of the video should be limited to on the campus

According to Jonathan Band legal counsel to ALA and ARL, Peter Jaszi, Professor of Law, Faculty Director of the Glushko-Samuelson Intellectual Property Clinic at American University Washington College of Law and Kenneth D. Crews, Director of the Copyright Advisory Office at Columbia University, “the Fair Use exception applies only to the showing of films in physical classrooms or similar places devoted to instruction, and not in remote locations. The key question is where the film will be viewed by the class, not where the physical copy is located. While the exception would cover the streaming of a film from a media lab to the classroom where it is viewed, it would not reach the streaming of a film to students’ residences for homework. And while the provision would allow a student to display in class a multimedia presentation including film clips, it would not permit the student to post the presentation to a website. *(The permissibility of the posting would be evaluated under the fair use doctrine, 17 U.S.C. § 107.)*”

[http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/copyright/fairuse/digitalclassroomdelivery/webdigitalpsafinal.pdf](http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/copyright/fairuse/digitalclassroomdelivery/webdigitalpsafinal.pdf)
Third, this exception applies only to legally obtained copies of a film.

If you still have questions regarding Fair Use, you can refer to the Fair Use Evaluator web site at:

http://librarycopyright.net/resources/fairuse/howitworks.php

Face-to-Face Instruction- Using YouTube, Netflix, Amazon Prime, Hulu, or other online videos.

You can link YouTube videos and other online videos and play them in your face-to-face course. However, if you knowingly use links to illegally posted videos, you may be at risk in contributing to a Copyright infringement.

Face-to-Face Instruction- Duplicating Videos for Classroom Use

Section 110 (1) of the U.S. Copyright Law provides you the mechanism to show all or part of copyrighted material in your face-to-face class. However this law does not specially extend “reproduction” rights to you to transfer your videotape to a digital format. If you digitize small portions of the video, you would likely fall under Fair Use protection. Copying the entire movie may not qualify. To be totally safe, you should purchase a digital copy of the program from the producer. If it is not available, then digitize the entire movie and specify that the videotape as “deteriorating.”

Section 108 of the Copyright Law provides that reproducing a VHS to DVD without the prior permission of the copyright holder does not legally qualify to be reproduced unless the duplication is carried out solely for the purpose of replacement of a VHS tape that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete. Video formats such as ¾” are officially listed as obsolete, while ½” VHS is not.

On-Line Instruction

Section 110 (2) of the Copyright Law (known as the TEACH Act) deals with using digital materials in an on-line environment, i.e., a class using a learning management system (LMS) such as Desire2Learn or Moodle which requires authentication for students to see the content. To claim Fair Use in this situation, you cannot play the entire (VHS) video program (same as in a face-to-face class), but you can digitize “reasonable” portions of the VHS program, as long as there is no digital version available.

Duplicating or Transferring VHS Videotapes to a Digital Format

If you decide to pursue making a digital copy of the material from an analog tape, such as VHS, you must determine if you have permission under the copyright law to do so. In general, if a work is available for purchase in a digital format, you must make the purchase rather than make a copy. If the work is unavailable in digital format you must make a documented attempt to locate the copyright holder and obtain permission for the digitization process.
On-Line Instruction- Using YouTube or other on-line videos in a LMS

You may link to YouTube videos and other online videos in your learning managed course, if you show them in their entirety or in clips. However, if you knowingly use links to illegally posted videos, you may be at risk in contributing to a Copyright infringement.

On-Line Instruction- Uploading your videos to YouTube or other on-line videos in a LMS.

You cannot take your copyrighted film and video and upload the video to YouTube or other services. If you record your own video program and use copyrighted music, you must obtain copyright clearances beforehand, or your video will be “flagged” and likely removed from the Internet.

On-Line Instruction- Streaming Your Video Programs

Copyright law prohibits you from steaming video programs in your on-line course, unless you receive permission from the copyright holder, or you purchase streaming rights. One option is to work through Murphy Library and utilize Films on Demand which can provide streaming access for many films and videos. These videos can be integrated into your on-line curriculum as well as your face-to-face class.

On-Line Instruction- Streaming Your Lecture with Embedded Copyrighted Film Included

You cannot stream your on-line lecture if portions contain copyrighted videos. You would need to obtain appropriate clearances from the copyright holder.

Steps to Follow When Considering Duplication

You should attempt to determine who holds the copyright for the VHS videotape. If this is not clear, you should contact the producer of the commercially produced video program to find out who holds the copyright. The producer, if located, may grant you rights without charge or require you to purchase either the rights to digitize, or make a DVD copy of the program.

If the copyright holder refuses to grant permission for the digitization, you may not digitize the work. If you have made serious efforts, but are unable to locate the copyright holder, and if the VHS tape is deteriorating, then you may ask Information Technology Services (ITS) to digitize the VHS videotape for you.

How do you get your analog video material digitized?

Decide what sections of the video (clips) you need to digitize. Digitizing your VHS clips may provide you the opportunity to improve or stabilize the original video, however there are limits to what can be restored.

Decide all the uses of your video including on-line options such as YouTube®, MyMediasite®, Kaltura®, or digital files, or hard media like DVDs.

Decide what formats you would like your digital clips to be converted into, i.e., .mov, .wmv, or what format should the video clips reside on such as DVDs or on-line.
If ITS duplicates your video, a disclaimer will be edited at the start of the video, and this information will also be printed on the cover of the media. Depending upon specific situations, various disclaimers will be attributed to each digitally duplicated program. One disclaimer may say, “Every reasonable attempt has been made to contact the producer of the media, but have been unsuccessful.

This digital copy is intended to preserve the original video and is intended for academic use only. It cannot be duplicated.” Another disclaimer may say, “This temporary digital copy is strictly intended for academic use and may not be duplicated in any manner, in accordance with U.S. Copyright law.”

ITS will document the efforts of our clients to obtain the appropriate clearances to utilize their digital assets, and will assist our stakeholders throughout this process. Contact the Eagle Help Desk, 608.785.8774, with additional questions.