

Best Practices for Online Course Design

US copyright law has an exception for face-to-face teaching that covers most uses of copyrighted material, but the law is still catching up to online and blended formats. Below are some suggested best practices from the University of Illinois Center for Innovation in Teaching & Learning (CITL) that I have adapted for this session.

Link out. Linking to content is the simplest way to include copyrighted material in your course. You may link to public domain, library-licensed and open-access content that is legally available online without concern for violating copyright.

Practice fair use. Fair use is an exception in US copyright law that establishes the right to use copyrighted material without permission or payment under some circumstances, especially when the educational or social benefits of the use are significant. This includes purposes such as criticism, commentary, news reporting, teaching, and research. The law includes a four factor test to decide fair use. Performing a fair use analysis may protect you from liability under the good faith defense in copyright law.

Consider using resources from the public domain and works not in copyright. Works created by the federal government do not have copyright and can be used without permission. The public domain also includes works with expired copyright terms (generally works first published in the US before 1923). Works with minimal creativity, such as facts, formulas, and procedures, do not have copyright protection.

Understand the Creative Commons. The Creative Commons (CC) is a set of licenses that allow copyrighted works to be used under certain conditions, such as with attribution to the author, in a non-commercial format, etc. These materials can be used without seeking permission from the copyright holders as long as the terms of the license are followed.

Request permission when necessary. Some copyright holders will give permission to use their work in online courses (works by other colleges and universities, visual materials from required textbooks, etc.). Guidelines for permissions requests include:

- Keep a written record of any agreements.
- Clearly define your proposed use - duration, the amount of the work, how it will be used.
- Highlight relevant technological protections, e.g., “content will be password-protected, not available for download, and limited to students enrolled in the course.”

Limit access and duration. Copyrighted materials that are uploaded to your course site should only be available to students enrolled in the course and only for the duration of the course.

Control downstream use. Include the following language somewhere in online courses to make students aware that materials should not be further disseminated: “The materials included here may be subject to copyright law. They are intended solely for students enrolled in this course during the current term and should not be further disseminated.”

Course Content Decision Tree

Step 1: Identify the content to be used. Determine if it is copyright protected. If it is not protected, you are free to use it. If it is protected by copyright, go to Step 2.

Step 2: Look for a licensed copy (library database, legally posted on the Internet, Creative Commons). You should link to the content whenever possible to avoid creating a copy. If no licensed copy is available, go to Step 3.

Step 3: Perform a fair use analysis. Consider all four fair use factors:

1. *Purpose of the use.* Educational uses always weighs in favor of fair use.
2. *Nature of the work.* Is it factual, fictional, or highly creative?
3. *Amount used.* Use only the amount needed for the class.
4. *Effect on the market.* Are you preventing students from buying the materials?

None of the four factors alone are dispositive of a fair use determination. However, the fourth factor tends to be considered most heavily and is often the deciding factor when fair use is not found in the higher education setting. If a licensing mechanism is available, it will weigh against fair use. Supplementary readings weigh against fair use, so you should look more closely when readings are not required. Single chapters of books are typically acceptable.

Does fair use apply? If yes, then you may use the content. If not, go to Step 4.

Step 4: If fair use does not apply, look for an alternative. Faculty may summarize material or use portions in class or in lectures to supplement alternative readings.

Streaming Video Best Practices

Link to licensed or free online content when available. This could include library or university licensed videos or legally posted online videos. When using commercially produced videos or clips, look for sites hosted by the copyright holder. Avoid personal YouTube or other video sites when possible because:

- Videos may be posted without copyright permission
- Videos may be taken down midterm without notice

Avoid ripping and posting entire DVDs. This is a potential violation of the DMCA and is not protected by the TEACH Act. The safer alternative is to use smaller portions of the video or copy the video using screen capture technology, although this may still violate the DMCA because it uses technology to bypass DRM protections on the disc. If an entire video is copied for an online course, you should rely on fair use to justify inclusion of the class materials.

The legality of copyright and video streaming is still very murky, and there is little guidance to rely upon. You should always consider the use that presents the least risk of a copyright violation.