Technology now allows faculty to stream movies and other media for teaching in unprecedented ways. Students and faculty value the flexibility of viewing movies—whether in part or in their entirety—any time, anywhere—and they rely on the Library to provide titles required by faculty for teaching purposes. Copyright law affects many of the choices we make as scholars, students, and librarians as we legally acquire, view, and use movies for teaching and educational needs.

This ©Guide provides an overview of key parts of the US Copyright Act— including relevant limitations to a copyright holder’s rights—regarding copying of movies for teaching. These elements of the law interrelate, and several aspects are likely to apply simultaneously to the same situation. Generally these limitations work together to provide educators a broad set of abilities to make use of copyrighted materials in their day-to-day teaching. Understanding these limitations will allow teachers to effectively make use of copyrighted materials and to respect and fully utilize the protections provided to them by the law.

There is a tremendous amount of confusion in how to apply these different strands of copyright law—this guide is an effort to clarify the law and its limits as well as identify ways it may support certain copying of movies for teaching purposes. Contact us directly with specific questions. We are happy to meet with you or your department to discuss copyright as it relates to your work.

Contact Information
Library Copyright Office
http://www.lib.umich.edu/copyright
copyright@umich.edu

What is copyright? 17 USC 102 - Copyright is a form of legal protection that allows authors, photographers, composers, and other creators to control reproduction and distribution of their work. There are several different rights that make up copyright. The subject matter of copyright is defined in Section 102 of Title 17 of the United States Code (17 USC 102). In general, copyright holders have the exclusive right to do and to authorize others to do the following:

- Reproduce the work in whole or in part
- Prepare derivative works, such as translations, dramatizations, and musical arrangements
- Distribute copies of the work by sale, gift, rental, or loan
- Publicly perform the work
- Publicly display the work

The law also limits these rights in some important ways—including the "fair use" provisions of the US Copyright Act. Fair use allows certain uses of copyrighted material without permission of the copyright holder.

What is fair use? 17 USC 107 - Fair use allows limited use of copyrighted material without permission from the copyright holder for certain purposes such as criticism, parody, news reporting, research and scholarship, and teaching. There are four factors to consider when determining whether your use is a fair one. A court must consider all the factors below when deciding whether your use was a fair use, even though all the factors do not have to be in favor of a use to make it a fair one. The four fair use
factors are as follows:

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work, such as whether the work is fiction or non-fiction, published or unpublished;
3. The amount of the work used in relation to the copyrighted work as a whole, such as using a poem in its entirety, or using one chapter from a long book;
4. The effect of the use upon the potential market for the copyrighted work.

Just because your use is for a non-profit educational purpose does not automatically give you permission to copy and distribute other people’s work. While many educational uses may be fair, you will need to evaluate your use each time you reproduce copyrighted material — to show in your class, to hand out copies, to include in your writing, or to post on CTools, etc. Fair use is, as the name implies, about fairness. There may indeed be times that copying a legally acquired movie – in whole or in part – may be a fair use. Each situation must be evaluated individually. However, the preliminary assumption should be that copying without authorization of the copyright holder is not permissible.

For assistance, in analyzing the four factors for individual cases, see the Fair Use Evaluator provided by the ALA Office for Information Technology Policy and Michael Brewer or contact the Copyright Office at the University Library. We can’t provide legal advice but will help you understand the issues and possible options.

108 Library and Archive Limitations - In addition to fair use, the Copyright Act treats libraries and archives in a special manner. Section 108 of the Copyright Act provides for some important limitations to the rights of copyright holders. These limitations allow libraries and archives to copy certain materials in the library collection for preservation purposes and make copies for interlibrary loan. That’s the good news. Unfortunately, Section 108 is extremely complicated to apply and addresses only ‘copies and phonorecords’. Movies are not among the kinds of creations that can be copied under the provisions of Section 108. That is, §108 is simply not particularly relevant to making copies for teaching purposes. Many people assume libraries can make copies for patrons – but the kind of copying libraries are permitted to do under 108 are not ‘transferred’ to library patrons. Section 108 and its limits are mentioned here simply to clarify common misunderstandings about the relevance of the library and archives’ exemptions to other situations.

110 Classroom Teaching Limitation - Students and instructors are allowed under the Copyright Act to use, display, and perform sections of copyrighted works in a classroom setting without first obtaining permission of the copyright holder. In order to be covered by section 110, the work to be used must be:

- Legally obtained
- Used for educational, as opposed to entertainment, purposes
- Used in a classroom setting, or a setting traditionally used for teaching

The 110 teaching limitation does not cover all types of copyrighted materials, however, it does apply to
many materials used in the course of normal teaching, such as:

- Copies of magazines, newspapers, journals, or books may be distributed, provided that they are not done so in a way that would replace materials that students would otherwise be expected to purchase. So, while a copy of an article from last week’s New York Times would be covered, the serialized distribution of a workbook would not.

- Playing music for educational purposes in the classroom is covered by the classroom teaching exemption; playing music for aesthetic purposes, i.e., background music, would not be protected in the same manner.

- Still images, photographs, maps, and other visual images can also be used, provided that the purpose behind the use is educational.

- Lawfully made copies of movies or television shows can be used for educational purposes in face-to-face teaching activities “in a classroom or similar place devoted to instruction.”

In order to qualify for the protections of the TEACH Act, the movie or television show must serve some educational purpose. Only a limited and reasonable amount of a work can be used.

**TEACH Act – 110(2)** - In 2002, the Copyright Act was updated to reflect the increased prevalence of distance education. Because of the wording of the classroom limitation, it was unclear what the protections educators had for distance education. The TEACH Act sought to address this and permits the following activities:

- Films and other audiovisual works may be transmitted digitally, but not in their entirety. *Only a reasonable and limited amount of a work can be used.* This language is not especially clear or definite, so instructors should take care to only transmit what is necessary for their educational goals in order to stay within the protection of the law.

- Still images or other materials that are normally present in a classroom may be transmitted for educational purposes.

- Reading from a non-dramatic work, or playing music for purposes of distance education is allowed; however, this does not apply to dramatic works, such as plays.

The TEACH Act also has several important conditions as well:

- In order to be protected by the TEACH Act, the work to be transmitted must be lawfully acquired; downloading a movie without a license and then making that copy available would not be a protected activity.

- Materials designed specifically for distance or interactive online education, such as online courses, ebooks, and the like are not covered by the TEACH Act.
Also, materials that would otherwise be included in a course pack that a student would be expected to purchase are not subject to the protections of the TEACH Act as well.

*Keep in mind...* The fair use limitation operates alongside the limitations laid out in the classroom limitation and the TEACH act; as such, if a given use is not covered by those sections, it still may be a fair use.

‘Breaking’ digital rights management - The Digital Millennium Copyright Act 17 USC 1201 - The Digital Millennium Copyright Act (DMCA) was signed into law in 1998. Intended to bring the United States into compliance with international treaty obligations, the DMCA heightened certain penalties for various acts of copyright infringement and provided a “safe harbor” for certain types of online service providers. It is part of the US Copyright Act. In addition to those provisions, the DMCA also created a set of rules governing the circumvention of access controls. The anti-circumvention provisions of the DMCA make it illegal to:

- manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that -
  - (A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title...

Essentially, the DMCA forbids anyone from using, making, or distributing any technology or service that bypasses effective access controls. This includes programs that “crack” video games, removing the digital rights management software (DRM) as well as programs that remove the copy protection on DVDs.

Limitations to the Anti-circumvention Provisions - As strictly interpreted, the above provision of the DMCA could effectively prohibit a user from making a non-infringing use of a copyrighted work (like a fair use), so long as that work was protected by an effective access control. For example, if an author wishes to write a movie review, using several stills from the film to illustrate her point, fair use would allow her to do so. However, under the DMCA anti-circumvention provisions, she would be arguably forbidden to do so – in that she would not be able to make the necessary copy of the stills from the film to, in turn, make the fair use without circumventing any access controls.¹

Because such a strict reading of the DMCA anti-circumvention provisions would have had a chilling effect on constitutionally protected speech, Congress included a provision in the statute that requires the Librarian of Congress, under advisement from the Registrar of Copyrights, to hold rulemaking procedures every 3 years. These are public proceedings; interested members of the public describe situations that they think should be exempt from the DMCA limits. The final recommendations are largely informed by advocacy work done by individuals and organizations seeking limitations, typically including uses for libraries. There are currently six exemptions to the DMCA anti-circumvention provisions issued in July 2010. This means that persons making non-infringing uses (like a fair use) will not be subject to the prohibition on circumventing access controls until the end of the next

¹ This is not a fully resolved question. There are some courts which have ruled that the DMCA only protects uses that the Copyright Act would itself protect. However, it may be some time before this question has a definitive answer.
rulemaking proceedings. Of the six, the following is of particular interest to educators who want to require students to view movies for class preparation:

Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

(i) Educational uses by college and university professors and by college and university film and media studies students;
(ii) Documentary filmmaking;
(iii) Noncommercial videos.

This is a very limited exemption and does not cover all of the use scenarios that libraries or educators may encounter. Of course, theoretically there may be other kinds of circumvention that are fair use or fit into one of the other limitations on the otherwise exclusive rights of copyright, these are likely to be limited to fact-specific situations that would require a high fair use threshold for a judge to find in favor of the circumvention (that is, to find that the circumvention is not a copyright infringement).

**Resources**

US Copyright Act
Section 107
http://www.copyright.gov/title17/92chap1.html#107

Section 108
http://www.copyright.gov/title17/92chap1.html#108

Section 110 and 110(2)
http://www.copyright.gov/title17/92chap1.html#110

Section 1201
http://www.copyright.gov/title17/92chap12.html

Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works
http://www.copyright.gov/1201/