

Exceptions for Instructors

in U.S. Copyright Law

Under certain conditions, U.S. Copyright Law provides for the educational use of copyrighted material *without* the permission of the copyright holder. To ensure your use meets all necessary conditions, it is recommended that you share this summary with a copyright specialist before proceeding with your intended use.

Name:	Dr. John Jacob Zimmerman
Job Title:	Professor of History
Institution:	Western Rhode Island State University
Title of Work Used:	Apocalypse Now (1979)
Author/Copyright Holder:	Francis Ford Coppola
Date of Use:	September 16, 2009
Additional Information:	I'll be having students view 3 clips 3-10 minutes long as part of a writing assignment about popular images of the Vietnam war.



Your use appears to meet the requirements of Section 110(2) of the U.S. Copyright Law (also known as the TEACH Act), exempting it from requiring the permission of the copyright holder.*

For the full text of the law, visit the [U.S. Copyright Office website](http://www.copyright.gov).

****Disclaimer:** This document is intended to help educators better understand the educational exceptions available to them in U.S. Copyright Law. It is not a source of legal advice or assistance. The results are only as good as the input provided by the user and are intended to suggest next steps, and not to provide a final judgment.*

Is the copy you will be using 1) a legal copy or 2) a reproduction of a legal copy? ¹

YES

- 1 - Clarification: A legal copy is one that was legally obtained (purchased from a reputable vendor, checked out from a library, etc.).

Examples: 1) If you're screening a film in class, you should not use a dubbed copy.* Use a legally acquired copy. 2) If you're streaming portions of a film (under TEACH), the copy from which the streaming files are created must be a legal one.

*Note: While there were "fair use" guidelines for the educational use of off-air recordings (content taped from television) included in a House Report (H.R. 97-495), these are guidelines and are not the law. [See Circular 21, page 22]. Any use of this type (of copyrighted content recorded from television or from some other source) would also have to be justified separately under Fair Use.

Bottom Line: If you are unsure of whether or not your copy is legal or was legally obtained (e.g. it's a DVD-R of a popular film with no case or studio information printed on it), you should check with a librarian or a copyright specialist.

Will the copyrighted work be performed or displayed ² in 1) the course of face-to-face teaching activities ³ of a 2) non-profit institution in a 3) classroom or similar place devoted to instruction? **NO**

- 2 - Performance: 1) Screening a film or television program, playing a musical or other recording (or portions thereof), etc., 2) Having students perform a scene from a play, ballet, opera, score, etc.

Display: 1) Showing your class a PowerPoint presentation that includes copyrighted images and/or text; 2) Using the computer and projection system in your class to direct your students through an online photography exhibit hosted by the British Library

- 3 - Clarification: If the performance or display will happen in the classroom and as part of the course, it would meet the "face to face" requirement.

Will the copyrighted work(s) be displayed or performed ⁴ as part of mediated ⁵ online instructional activities ⁶ of 1) a governmental body or 2) an accredited nonprofit educational institution? **YES**

- 4 - Performance: 1) Screening a film or television program, playing a musical or other recording (or portions thereof), etc., 2) Having students perform a scene from a play, ballet, opera, score, etc.

Display: 1) Showing your class a PowerPoint presentation that includes copyrighted images and/or text; 2) Using the computer and projection system in your class to direct your students through an online photography exhibit hosted by the British Library

- 5 - Definition: "Mediated" here means that the course has an instructor involved in directing it.*

*From Senate Report (107th Congress): [TEACH] "is not intended to require either constant, real-time supervision by the instructor or pre-approval by the instructor for the performance and display. Asynchronous learning, at the pace of the student, is a significant and beneficial characteristic of digital distance education and the concept of control and supervision is not intended to limit the qualification of such asynchronous activities for this exemption" (From Part IV, "Section-by-Section Analysis")

- 6 - Clarification: 1) The course may be entirely online, or may be a traditional course that has some instructional activities that take place virtually.

Clarification: 2) The display or performance may take place virtually at the same time for all students and the instructor (synchronous), or may take place at different times (asynchronous).*

*From Senate Report (107th Congress): "For our nation to maintain its competitive edge, it will need to extend education beyond children and young adults to lifelong learning for working adults, and to reach all students of all income levels, in cities and rural settings, in schools and on campuses, in the workplace, at home and at times selected by students to meet their needs. Distance digital education helps make this possible, whether in the traditional sense, when instructor and student are separated in place and perhaps in time, or in new hybrids of traditional classroom education combined with online components" (under Part I, "Purpose")

*From Senate Report (107th Congress): "Asynchronous learning, at the pace of the student, is a significant and beneficial characteristic of digital distance education and the concept of control and supervision is not

intended to limit the qualification of such asynchronous activities for this exemption" (under Part IV, "Section-by-Section Analysis")

Is online access ⁷ to the display or performance restricted to students officially registered in the course, or to employees of governmental bodies as a part of their official duties or employment? YES

- 7 - Clarification: Access to the online display or performance of any materials under this section must end when the course ends.

Was the work to be performed 1) produced specifically for use in mediated online instructional activities ⁸ or 2) has it been marketed primarily for that use? YES

- 8 - Example: Instructional materials or content (podcasts, assignments, video tutorials or clips, etc.) created specifically for courses designed for professionals who have ongoing learning or professional development requirements as part of their continuing certification (e.g. medical professionals, lawyers, IT technicians, etc.)

Has the content under consideration for use been selected by the instructor or at his/her direction? ⁹ YES

- 9 - Acceptable: The instructor could direct a teaching assistant (e.g. as part of an online discussion) or student (e.g. as part of an assignment) to post content that would be covered by this exception.

Unacceptable: Students using the course management system to share music files, photographs, or other copyrighted material that were not directly related to course assignments.

Is the use of the content under consideration directly related to the learning goals of the course? ¹⁰ YES

- 10 - Clarification: Does the use of the material 1) directly support an identified learning outcome, or is it 2) required for the completion of an assignment or other activity in the course syllabus?

If a work is under consideration for display, is the amount to be used comparable to what would typically be displayed/shown in a live classroom session? ¹¹ YES

- 11 - Acceptable Example: Scanning and posting to Blackboard a dozen or so provocative images, selected to generate lively discussion board postings from your class on a new course topic.

Unacceptable Example: Scanning and posting to Blackboard a whole slide library that students might use in their research.

Unacceptable Example: Scanning and posting an entire textbook so students wouldn't have to buy it or come into the library to use the one on reserve.

If a work is under consideration for performance, is it a performance of either, 1) a non-dramatic literary ¹² or musical work (in part or in its entirety), or 2) reasonable and limited portions ¹³ of any other work? ¹⁴ YES

- 12 - Clarification: Neither "dramatic" nor "nondramatic" are defined in the law.

Dramatic Works: Generally, in dramatic literary works the narrative is told through dialogue and action (i.e. theatrical performances)

Nondramatic Works: Thus, the performance of a nondramatic literary work would include things like recorded recitations from books or other sources

- 13 - Clarification: "Reasonable and limited" is not defined in the law itself*

*From Senate Report (107th Congress): "[W]hat constitutes a 'reasonable and limited' portion should take

into account both the nature of the market for that type of work and the pedagogical purposes of the performance." The Report also defines 'reasonable and limited' as "less than the entire work" (under Part IV, "Section-by-Section Analysis")

Conclusion: As such, 1) the amount used should not exceed that which is required to provide for the educational objectives set forth by the instructor; 2) It should not exceed what would normally be performed during an in-class session, 3) Should be less than the entire work, and 4) Consideration should be given as to the potential effect the performance of the amount under consideration could have on the market for the work.

- 14 - Clarification: "Other works" includes 1) any audiovisual works (film or video of any kind), or 2) performances of dramatic literary or musical works (theatrical literary or musical productions like plays, ballet or opera). Only "reasonable and limited portions" of these categories of works are allowed under this exception.

If you are planning on streaming audio or video content, and the copy from which you are preparing the digital file is an analog copy (VHS, 16mm, audio LP or cassette, etc.), one of the following two statements must be true: 1) A digital version of the work is unavailable for purchase in an unused copy OR 2) The digital version that is available is subject to technological measures that are designed to prevent it from being copied ¹⁵ YES

- 15 - Note: An example of this would be the CSS [Content Scramble System] anti-piracy protections that control access and inhibit the duplication of many commercial DVDs (like Macrovision, etc.)

Clarification: It is illegal to circumvent these kinds of technological controls, except for under very limited circumstances laid out by the Librarian of Congress in 2000, and reviewed every 3 years. None of the current rules (as of early 2009) are applicable under TEACH. See: <http://www.copyright.gov/1201/>

1) Does your institution have copyright policies and provide information about copyright? Do they also give notice that the materials used may be protected by copyright? 2) Does your institution apply technological security measures that reasonably prevent recipients from retaining copyrighted works beyond the class session and/or further distributing them? ¹⁶ 3) Does your institution interfere with or circumvent technological measures taken by copyright owners that prevent retention and distribution (i.e. anti-piracy controls)? ¹⁷ YES

- 16 - Example: Using a course management system, or other means of authenticating valid users, to limit access only to those enrolled in the course

Example: Using audio/video streaming or other technologies to ensure that video or audio clips cannot be retained or further disseminated

- 17 - Note: An example of this would be circumventing or disabling the CSS [Content Scramble System] anti-piracy protections that control access to and inhibit the duplication of many commercial DVDs (like Macrovision, etc.)

Clarification: It is illegal to circumvent these kinds of technological controls, even if your use would otherwise meet all the requirements of this exception.

Clarification: As noted before, however, if the content you'd like to use is on a DVD that employs anti-piracy protections and the content is also available in analog format (VHS, 16mm, etc.) the analog copy can be legally digitized and used under this exception [Section 110(2) - the TEACH Act]