



## FAIR USE GUIDELINES FOR USING FILMS AND VIDEOS

Most films and videos are copyrighted, and use of them is subject to copyright restrictions. These guidelines attempt to share with faculty and students how they may use films and videos legally.

### Classroom Use

Use of film and video is permitted in an educational institution so long as all of the following conditions are met:

1. The film must be shown as part of the instructional program.
2. The film must be shown by students, instructors, or guest lecturers, and can only be shown to students and educators.
3. The film must be shown either in a classroom or other school location devoted to instruction.
4. The film must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
5. The film shown must be a legitimate copy, with the copyright notice included.
6. Films or videos may not be used for entertainment or recreation.

### Use Outside the Classroom

Besides use in classrooms, films or videos that are owned by Xavier University may ordinarily be viewed by students, faculty or staff at workstations or in small conference rooms. These videos may also be viewed at home (e.g., in a dorm room or dorm lounge), so long as no more than a few friends are involved.

"Public" viewings of film, in which a film is shown in a place open to the public and which anyone can attend, require explicit permission from the copyright owner for "public performance" rights.

### Digitizing/Streaming Video in Distance Education

The 2002 TEACH Act was enacted as an amendment to the Copyright Act of 1976. It addresses copyright in distance education (and other teaching which has an online, web-enhanced, transmitted or broadcast component). The Act allows video to be transmitted digitally in distance education and other online courses. However, it is a very specific provision. The video must be shown **in a classroom situation analogous to face-to-face teaching**. It must be:

- An integral part of a single, typical “class session;”
- Part of systematic mediated instructional activity;
- At the direction of or under the actual supervision of the instructor.

Whenever considering using digitized video for distance education, faculty should make sure the following conditions apply:

- For dramatic works such as feature films, instructors should use only a reasonable portion of the work (up to 20%); streaming a full-length feature film is not likely to be considered “fair use.”
- For non-dramatic musical works (such as simple, unadorned playing or singing of songs) and non-dramatic literary works (such as poetry readings, or readings from novels), the entire work may be used.
- Instructors should ensure the work was lawfully made or acquired.
- Access to the film must be limited to students who are formally enrolled in the course.
- Instructors must let students know if certain works are copyright protected and should warn students against copying/disseminating them.
- Instructors should "turn off" student access to the film at the end of the relevant lesson/lecture, or at the end of the semester.
- It is not advisable to copy or rip DVDs and distribute them to students – in many cases this would be a violation of the 1998 Digital Millennium Copyright Act, and can lead to hefty penalties. Instructors should use streaming technology for the broadcasting of video and audio content to protect against students further copying and disseminating the film.
- When deciding whether to digitize an analog recording such as a VHS tape, first ask the library if a digital version is available for purchase.

### **Digitizing/Streaming Video Outside the Classroom**

The TEACH Act specifically does NOT cover materials an instructor may want students to watch on their own time outside of class. Copyright law’s “fair use” provisions are unclear about whether or not it is a “fair use” to digitize and/or stream video content outside the classroom for a traditional college course. Practices vary from institution to institution.

### **Videos on E-Reserves**

The library can place DVDs and analog videotapes on reserve, on the assumption that use of these materials constitutes a logical and necessary extension of classroom teaching. Video materials deposited on reserve for a class will be returned to the faculty at the end of the semester in which they are used.

At Xavier, given limited bandwidth and server capacity, it is currently impractical to stream digital video on our e-reserves (and, as noted above, it is also unclear whether such uses would be defensible as “fair use”).

### **Copying Films/Videos**

Generally, copying films or videos without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price. Another exception was granted by the 2002 TEACH Act, permitting universities to copy digital works and digitize analog works in order to make authorized displays and performances so long as: 1) Such copies are retained only by the institution and used only for the activities noted above; and 2) In digitizing analog works, there must be no digital version of the work already available for purchase/copying.

### **Embedding/Linking to Online Video**

Linking to video that is already available online – such as embedding a YouTube video or OhioLINK video in your Canvas course or other web site – apparently often does not qualify as a copyright violation.

An embedded YouTube video is just a link; no copy of the video is being stored on your server. A 2007 legal precedent in the Ninth Circuit Court of Appeals seems to provide good support that this kind of embedding does not expose you to liability for direct infringement.

However, you should still use caution and common sense. If you link to a video that you *know* is infringing, or that any reasonable person would have known is infringing, and if your link materially contributes to the infringement, then you could be liable for contributory infringement -- a kind of "aiding and abetting" liability.

### **Filmmaking**

If a student is embarking on a project to make a film (whether it be a filmed interview, a documentary, a fictional feature film, etc.), there are complicated guidelines with respect to copyright and clearances. The need for obtaining clearances and rights varies depending on the kind of film that is made (commercial versus educational, for example), the use(s) to which the film will be put, and the various people and things that appear in the film.

Some basic tenets for filmmakers to keep in mind:

- While there are many exceptions, generally you must have permission to use what belongs to another person or entity, including their likeness, their personal property and their intellectual property. If you fail to obtain all the necessary clearances, rights and permissions, your project will be limited to “classroom” screenings only.

- You need people’s written permission to use their likeness in your film, if they are recognizable. If shooting in a public place, such as in a crowd scene that doesn’t focus on anyone for more than a second or two, you do not need their permission.
- When choosing a location, remember that generally you are allowed to film in any location visible to the general public, so long as you do not defame or disparage it, though you may need to acquire a Filming Permit from the city. Some restrictions may apply, but generally you can film on a city sidewalk or in a public park. However, if you go into any place of business or privately-owned location, you will need a Location Release.
- You are allowed to have copyrighted content (such as logos, brand names, and trademarks) in your film if this content appears incidentally. For example, if you are filming on the street and the McDonald’s arches can be seen in the background, you generally don’t need permission. Or, if you are interviewing someone and happen to record music or television noise in the background, this is also generally considered permissible.

Please contact us for more information if you have a specific film project in mind.

### **Films Used in Multimedia Presentations**

Educators and students can use portions of copyrighted content in their multimedia presentations (such as a PowerPoint presentation), under certain restrictions. According to the “Fair Use Guidelines for Educational Multimedia,” up to 10% or 3 minutes, whichever is less, of a film or “motion media work” may be reproduced as part of an educational multimedia project. For more information about these Multimedia Guidelines, go to: <http://www.ccumc.org/copyright-matters/fair-use-guideline>

### **Videos Thought to Be in the Public Domain**

The sites listed below contain movies commonly thought to be in the public domain, and works their owners are willing to let be distributed. “Public Domain” refers to the body of creative works and knowledge in which no person, government or organization has any proprietary interest such as a copyright. There is some risk, however, because of the difficulty of identifying works that truly do not have any proprietary interests.

- [Festival Films](#)
- [Desert Island Films](#)
- [Reel Media International](#)
- [BuyOut Footage](#)
- [OpenFlix](#)
- [Internet Archive Moving Images Collection](#)
- [National Aeronautics and Space Administration](#)

## Frequently Asked Questions

### **May I purchase or rent a film, and use it in my class?**

Yes. Use of such recordings is considered "fair use" in a face-to-face teaching situation, assuming the abovementioned conditions for "classroom use" are met

### **Is it permissible to make a copy of a rental video in order to use it again later?**

No. That would infringe on the rights licensed to the rental agency.

### **May I use an auditorium or other large space to show a video labeled "Home Use Only?"**

Yes, so long as the performance is not open to the public and is for an instructional purpose within the structure of the course.

### **May I record a copyrighted television program in its entirety, and show it to my class?**

Yes, with restrictions. Congress has created a special exception about this practice, for nonprofit educational institutions. Off-air recordings may be used by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction, during the first ten school days after the program was recorded. The recording must contain a notice of copyright. It may not be retained longer than 45 days.

### **Can students make copies of videos a professor has placed on library reserve?**

Copying an entire video would be infringement. When placing the video on reserve it is intended that the student either view it in the library or take it home for viewing.

### **Can a university-owned video be copied for reserves?**

It's not likely that this copying would qualify as "fair use." Generally, permission for the copying should be obtained from the copyright owner.

### **May I make a copy of my videos for safekeeping?**

No. This practice with audio and videotapes is a violation of the copyright law. Many people believe that it is permissible to make a backup copy of a videotape or audiotape, especially where the tape will be used frequently, so that if it is damaged, destroyed, or lost, the backup will be available to take its place. But this is not the case.

## **For More Information**

For answers to specific questions, please contact Xavier's Director for Library & Information Management, who serves as the university's Copyright Officer:

- Anne Davies, Head, Resource Sharing, [davies@xavier.edu](mailto:davies@xavier.edu)
- Patty Greco, Acquisitions Librarian, [greco@xavier.edu](mailto:greco@xavier.edu)
- Tina Meagher, Manager of Media Services, [meagher@xavier.edu](mailto:meagher@xavier.edu)
- Laura Calhoun, Paralegal, President's Office, [calhounl@xavier.edu](mailto:calhounl@xavier.edu)

## Helpful Online Sources

- [U.S. Copyright Office](#)
- [Stanford University Copyright and Fair Use Center](#)
- [Cornell University Copyright Information Center](#)

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