UNIVERSITY OF CALIFORNIA SAN DIEGO

OFFICE OF THE EXECUTIVE VICE CHANCELLOR
ACADEMIC AFFAIRS

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0001
PHONE (858) 534-3130

3/24/20 Guidance created by UC San Diego Librarians for distribution by EVC Simmons' Office, with regard to remote teaching uses of copyrighted materials.

Copyright Guidance for Online Instruction

Background

This guidance document is intended to assist you in understanding how you may use materials as we rapidly shift to an online setting in the context of COVID-19.[1] While legal obligations do not dissolve in the face of a public health crisis, U.S. copyright law is equipped to provide the flexibility necessary for the majority of remote learning needed at this time. Most copyright issues are the same online as they are in the classroom: if it is okay to do in class, it is often okay to do online, especially when online access is limited to enrolled students.

UC San Diego and University of California policies affirm that it is the instructor's right and responsibility to make reasonable and good faith decisions about when they can make copies of copyrighted materials for students in course instruction. UC policy states that: "The University will defend its employees who use copyrighted materials in an informed, reasonable, and good faith manner, and within the scope of their University employment."[2]

In addition to this guide, subject librarians and the scholarly communication librarian are available for consultation on course material use. For additional information on this topic, please see UC's systemwide "Copyright and Fair Use" policy and UC's "Copyright" website.

Please note that this is a guidance document, not policy or legal advice. It may not address your particular question or situation, and it does not modify or supersede existing policy or law. If you have questions about how to protect your own copyright in an online setting, please refer to the March 20, 2020 guidance issued by the EVC.

Recommendation 1: Use University managed and approved course platforms.

The best way to ensure you are complying with access restrictions, protecting copyrights, and mitigating infringement risks is to use the University-managed course platform Canvas. This platform helps ensure that generated course materials are protected and that posted third-party content is available only to enrolled or auditing students. University managed platforms such as Canvas include all of the technical tools needed to limit access and help ensure course materials are protected.

If you post outside the University's platform, it may be difficult to control access to content that should be restricted. Also, videos posted elsewhere are more likely to encounter copyright enforcement efforts,

---

[1] Adapted from "Rapidly shifting your course from in-person to online" by Nancy Sims @CopyrightLibn, University of Minnesota Libraries, and licensed under a Creative Commons Attribution-NonCommercial License as well as the Public Statement on Fair use https://tinyurl.com/tvnty3a
[2] https://policy.ucop.edu/doc/2100007/CopyrightFairUse

such as a takedown notice, disabling of content, or a claim for copyright infringement coupled with legal settlement demands.

Recommendation 2: Apply a Fair Use analysis to help evaluate whether you may use content created by others in your online teaching (e.g., in your lectures, slides, recordings, live-cast lectures, etc.).

The bulk of remote teaching may likely be similar to your regular class structure whereby you share a whiteboard (or substitute), slides, images and documents, course readings, and perhaps audio and video clips. You may also choose to record your class and make the recording available to students for later viewing.

Fair Use is an important tool in U.S. Copyright law that is designed to support teaching, research, and learning.[3] Fair Use considers four factors[4]:

- The PURPOSE and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The NATURE of the copyrighted work;
- The AMOUNT and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The EFFECT of the use upon the potential market for or value of the copyrighted work.

Faculty can make their own Fair Use determination using a Fair Use checklist or by consulting with their subject librarian. Keeping completed checklists on file is a recommended best practice. More information is available on the Library's copyright information site.

Techniques to provide you with protection when employing Fair Use include:
- Posting content created by others on a secure course platform managed by the University and limited to currently enrolled and auditing students.
- Including appropriate attribution with the posted content created by others. A sample attribution is: *"In order to comply with copyright law, the use of this content is restricted to use by students enrolled in this course and may not be downloaded, copied, or shared."*
- Limiting the extent of use of the content created by others.

Recommendation 3: Avoid copyright violations by providing web links to content owned or licensed by the University or University Library.

Linking to Library licensed content and using electronic reserves are safe methods to include third party content in your course platform. This content is purchased with the express intention for use in teaching and research. When you use content licensed by the Library, it is important to **link** to this content rather than post or upload PDFs, videos, or other digital files. Linking helps ensure compliance with license agreements. The Library can assist with the identification of direct content links in subscribed platforms if needed.

With advance notice, the Library's course reserves service can help you determine whether access to particular electronic content is available, purchase select content available electronically for use by your class, and link to the material within the student course reserves portal. Faculty can learn more about course reserves by contacting reserves staff at reserves@ucsd.edu.

---

[3] Public Statement on Fair Use in context of Emergency Remote Teaching https://tinyurl.com/tvnty3a
[4] See 17 U.S.C. § 107; https://ucsd.libguides.com/copyright/fairuse

Recommendation 4: Use streaming services whenever possible for digital media, including images, audio and video.

Creative Commons licensed images, images on Google image search with re-use licenses, and content in databases such as ArtStor can be an effective way to include image content without having to apply Fair Use.

Use of Library licensed content streaming services is an effective way to include digital audio and video in course content. Library licensed platforms such as Kanopy for videos may be linked to without concern in course platforms. Additionally, streaming services such as PBS, Amazon Prime, Netflix, and Hulu can be good sources, provided the content is openly available or each student has their own personal paid access to the content.

To find other content that is likely permissible under Fair Use, please consider these additional sources:
- Library databases and licensed electronic content
- UC San Diego Library Digital Collections
- Prominent library collections including the Library of Congress Digital Collections and the Smithsonian
- Additional openly licensed media resources

Recommendation 5: The Library and the Teaching + Learning Commons can assist you in assessing Fair Use and in providing alternative access options.

The Library employs experts who understand the application of Fair Use and can assist in the identification of alternate strategies to use in-copyright content. Library e-reserves, the scholarly communication librarian, and subject librarians are available resources.

An additional resource for faculty wishing to better understand copyright law and its application is the recently authored Statement on Fair Use and Emergency Remote Teaching and Research in the context of COVID-19.

Contact the Library or Teaching + Learning Commons for further information or assistance. In addition, the University of California's "Copyright" website contains a lot of other useful copyright information.