TILT Teaching Guides

Introduction: Copyright Essentials

"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

U. S. Constitution: Article 1, Section 8

This teaching guide explains the three exemptions provided educators under U.S. copyright law—Title 17 of the United States Code. These exemptions spell out the conditions under which copyright-protected materials may be used in U.S. accredited nonprofit educational institutions without seeking the express consent of the copyright holder. These exemptions are as follows:

- Classroom Exemption
- Distance Exemption (TEACH Act)
- Fair Use Exemption

In the event neither the Classroom Teaching nor Distance Education exemptions apply—both of which should be looked to first—the broader, more lenient Fair Use exemption might. Note: "Broad and lenient" does not imply or suggest, in any way, that Fair Use is a blanket, catch-all piece of legislation authorizing the use of copyright-protected materials when all else fails.

Each display or performance must be considered individually—and a good faith determination made—regarding under which exemption the use of otherwise copyright-protected material is authorized. Once made, it is essential that the instructor be able to support his or her determination with a credible argument.

Please note that understanding and properly applying these exemptions is an individual responsibility and that each instructor at Colorado State University is legally bound to comply. To learn more about these three exemptions, please visit the links above.

Classroom Teaching Exemption

Instructors and students of U.S. accredited nonprofit educational institutions may—in compliance with certain stipulations—use, display and/or perform in a classroom environment any copyright-protected material or work without seeking the copyright holder permission normally required under U.S. copyright law —Title 17 of the United States Code.

This section of the TILT Copyright Essentials guide explains these stipulations and provides a general description of the most common types of materials covered by
the classroom teaching exemption under Section 110(1). Please click on the following links to learn more about what is permitted:

- Classroom Teaching Stipulations
- Exempted Copyright-Protected Materials

**Classroom Teaching Stipulations**

The stipulations governing the display and performance of copyright-protected material in the classroom are few, but important.

- The materials must be legally obtained.
- The intent and purpose must be strictly educational.
- The location must be primarily for educational purposes.
- Both teaching and learning must be occurring simultaneously.

As with Distance Learning, it is the individual responsibility of every instructor at Colorado State University—in compliance with federal law—to make good faith determinations regarding copyright-protected materials used in class and be able to argue credibly in support of those determinations.

Displays and performances falling outside the qualifying stipulations may very well fall within the Fair Use guidelines; however, each should be carefully scrutinized for compliance with Section 107 before proceeding. For assistance please consult our Four-Point Fair Use Chart.

**Exempted Copyright-Protected Materials**

Under the classroom teaching exemption, all types of the following copyright-protected materials may be displayed and/or performed in the normal classroom environment. The stipulation being that the intent is for educational—not entertainment—purposes.

**Printed Materials:** Book chapters as well as newspaper, magazine and academic journal articles may, in most every instance be copied and handed out in class, the exception being consumables. In other words, copies of whole textbooks—handed out chapter-by-chapter in successive classroom sessions—standardized workbooks and/or test materials, etc. intended for commercial distribution and individual purchase may, under no circumstances be copied and handed out to students.

**Musical Reproductions:** Audio recordings of musical performances may be played in class in most every instance. An exception, for instance, would be playing background music in a classroom—i.e. elevator music. Such use does not have a teaching and/or learning component and would infringe upon the rights of the copyright holder.
**Still Images:** Visual images—or stills—as they are commonly referred to, including photos, graphs, charts, diagrams, maps, slideshows, PowerPoints, etc. may be shown in the classroom in most every instance.

**Audiovisual Materials:** Segments of TV shows, documentary films and movies, etc., illustrative of, or related to, course content are allowed in most every instance.

### Distance Education Exemption (TEACH Act)

The Technology, Education and Copyright Harmonization Act of 2002 (H.R. 22157)—commonly referred to as the TEACH Act—revised Title 17 of the United States Code providing a much needed technology update. A distance education exemption addressing "mediated instructional activities transmitted via digital networks" was added alongside existing Classroom Teaching and Fair Use exemptions governing the use of copyright-protected materials.

This section of the TILT Copyright Essentials guide explains current teaching, technology and course material parameters and conditions, as defined by Section 110(2), under which the display and performance of copyrighted-protected materials may be legally transmitted over digital networks. Please click on the following links to learn more about what is and is not permitted under the TEACH Act:

- Course Material Parameters
- Teaching and Technology Stipulations

#### Course Material Parameters

To a large extent, the TEACH Act leveled the playing field between physical classrooms and online, distance learning environments. Defined under its provisions are the terms and conditions under which educators in U.S. accredited, nonprofit educational institutions may, without seeking copyright holder permission, digitally use and transmit copyright-protected intellectual property belonging to another.

#### What’s Allowed

Providing that the applicable teaching and technology stipulations are satisfactorily met, the "distance education" exemption permits the digital transmission of the following course materials:

**Displays:** Copyright-protected materials that one would normally expect to see displayed in any physical classroom—including still images—may be transmitted digitally.
**Performances:** Entire performances of non-dramatic literary and musical works—excluding audiovisual works—may be transmitted digitally under the same exemption governing displays. Key word: Non-Dramatic.

All other works—including dramatic literary and musical works, audiovisual and sound recordings—may be digitally transmitted in "reasonable" but "limited" amounts.

**What’s Not Allowed**

Copyright-protected materials specifically prohibited from digital transmission by the distance education exemption are as follows:

- materials such as instructional E-books or CD’s that were designed and marketed specifically for interactive or online educational purposes
- materials normally considered as consumable products—like textbooks and courseware packs—to be purchased by students in fulfillment of a class requirement
- supplemental reading and research material—in any media format—not specifically required by the course instructor
- illegally obtained copies of any copyright-protected material

To assist you in making a proper determination, try using the Copyright Checklist from North Carolina State University’s TEACH Act Tool Kit.

**Teaching and Technology Stipulations**

**Teaching Stipulations**

Digitally transmitted materials must meet the following teaching stipulations for the distance education exemption to apply.

- The selected material must be comparable to and not exceed that which meets the normal expectation of teaching materials that would be found in use in a physical classroom.
- The selected material must be fundamentally related to the intended teaching content for which the course is designed to cover.
- The selected material must be a necessary component of the class session in which they are displayed and/or performed.
- The selected material must be displayed and/or performed under the direct supervision of the instructor or an assigned GTA.
- The class in which the selected material is displayed and/or performed must be officially sanctioned by the educational institution.
Technology Stipulations

Along with meeting the teaching stipulations mentioned above, certain technology conditions must be met as well.

- Analog versions may be digitized when—and only when—digital versions are unavailable. In addition, such versions must adhere to the "reasonable but limited" rule and be restricted to that necessary to accomplish the teaching goal.
- Access to digitally transmitted materials must be restricted to those students officially enrolled in the class in which they are presented and available only during the class session(s) for which they were designed.
- Adequate notification that digitally transmitted material covered under the "distance education" exemption is otherwise subject to standard copyright law must be prominently displayed.
- Reasonable technology safeguards blocking the retention and redistribution of material digitally transmitted for legally sanctioned educational purposes must be installed wherever and whenever possible.

To assist you in making a proper determination, try using the Copyright Checklist in the TEACH Act Tool Kit created by North Carolina State University.

Fair Use Exemption

Using copyright-protected materials without seeking the copyright holder permission otherwise required under U.S. copyright law —Title 17 of the United States Code (§ 107, 1976) is allowed so long as it is "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."

On its face, the exemption is simple enough: the intent being to balance the rights of individual copyright holders with the public good, an attempt to be fair. And therein lies the proverbial rub, and all the reason for due diligence in making a "good faith determination." After all, what seems "fair" to one may not seem so to another. It’s all in the interpretation.

As with Classroom Teaching and Distance Learning, it is the individual responsibility of every instructor at Colorado State University—in compliance with federal law—to make good faith determinations regarding fair use of copyright-protected materials and be able to argue credibly in support of those determinations.

This section of the TILT Copyright Essentials guide explains the four main factors—as outlined in Section 107—to be considered when determining the legality of using copyright-protected material without copyright holder permission.

Factor One: Purpose and Character
A fair use determination is favored when the purpose and character of the intended use can be categorized as strictly nonprofit, educational or personal. Criticism, commentary, news reporting, teaching, scholarly work and research, are all examples that favor that determination.

On the other hand, if the purpose and character intends to further any "For Profit" commercial and/or entertainment venture, copyright holder permission is required.

**Factor Two: Nature of the Work**

Fair use favors the use of factual, non-fiction materials. Creative work, such as fiction, poetry, painting, dance, etc. highly favor asking permission.

Using published work is far safer than using unpublished work as it favors the exclusive right of a copyright holder to designate when and where a work was or is to be published.

**Factor Three: Amount and Substantiality**

A fair use determination is more likely to be favored when small amounts of copyright-protected material are used. This is not, by any means, absolute.

Should the essence of the work in question be a small portion of a larger piece, infringement may be a possibility. Any case that is even the slightest bit "iffy" calls for asking permission from the copyright holder before proceeding.

**Factor Four: Market Impact**

A fair use determination is much more likely when the intended use bears no commercial aspect(s). When commercial aspects are intended, fair use favors the intended user (which definition includes institutions and/or estates) actually owning the legal copy.

Market considerations include the availability of regulated licenses or use permits. In their absence, fair use is favored. In their presence, substantial commercial aspects are in play, particularly as regards repeated and/or long-term use. Permission is required.

**Selected Copyright Resources**

**TEACH Act & Fair Use Tools**

- [The Technology, Education and Copyright Harmonization Act of 2002 (H.R. 22157)](http://www.teachact.org/)
- [North Carolina State Fair Use Worksheet](http://www.ncstate.edu/)
- [North Carolina State TEACH Act Checklist](http://www.ncstate.edu/)

http://tilt.colostate.edu/guides/
Colorado State University

- Communications & Creative Services Copyright Guidelines
- Academic Computing & Networking (ACNS) – Copyright Information at CSU
- Morgan Library Copyright Resources

U.S. Copyright Office

- Copyright Basics Page
- Frequently Asked Questions (FAQ’s) Page
- Copyright Brochures, Forms, Fact Sheets
- Title 17 of the United States Code
- § 106 – Exclusive Rights in Copyrighted Work
- § 106A – Attribution & Integrity Rights
- § 107 – Fair Use
- § 110 – Exemption of Certain Performances & Displays
- § 112 – Ephemeral Recordings

Copyright Management Organizations

- **Printed Material**
  - Copyright Clearance Center
- **Music**
  - ASCAP – American Society of Composers, Authors and Publishers
  - SESAC – Society of European Authors and Composers
  - Harry Fox Agency, Inc.
- **Motion Pictures**
  - Motion Picture Licensing Corporation
- **Images**
  - Artists Rights Foundation
  - American Society of Media Photographers

Association of Research Libraries

- Know Your Copy Rights

Peer Universities

- University of Maryland University College
- North Carolina State University TEACH TOOL KIT
- University of Texas Crash Course in Copyright
- Brown University Copyright Glossary
Basic TEACH Act Checklist
For Educational Institution Faculty, Staff and Students

Developed by
The Scholarly Communication Center at North Carolina State University

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Complies</th>
</tr>
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<tbody>
<tr>
<td>Accredited nonprofit educational institution</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Institutional copyright use policy</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Educational materials on copyright available</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Work is not a digital educational work</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Work is lawfully made and acquired</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Work is integral to class session</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Work is part of systematic mediated instructional activities</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Work is directly related/material assistance to teaching</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Works is:</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Non-dramatic literary work (may use all)</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Non-dramatic musical work (may use all)</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Reasonable and limited portion of any other work</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>(For a performance) or Display of any work in amount analogous to live classroom setting</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Reception limited to students enrolled in course</td>
<td>Yes____ No____</td>
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<tr>
<td>Reasonable downstream controls instituted</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>No retention of work longer that class session</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>No dissemination beyond recipient</td>
<td>Yes____ No____</td>
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<tr>
<td>For conversions of analog to digital</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>No digital version available to institution</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Digital version available is technologically protected</td>
<td>Yes____ No____</td>
</tr>
<tr>
<td>Warning notice to students present on work</td>
<td>Yes____ No____</td>
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About the Institute for Learning and Teaching: The Institute for Learning and Teaching (TILT) was established in 2006 to enhance teaching and learning at Colorado State University. We offer professional development programs and activities provide funding and support for research on learning and teaching, offer colloquia on the scholarship of teaching and learning, and promote collaboration within and across disciplines. Visit us on the Web at http://tilt.colostate.edu, or contact us at (970) 491-3132 or TILT@ColoState.edu.