

# MEMORANDUM

TO: University Senate

FROM: Associate University Counsel Maria C. Anderson, Dean of Library Services Judith Lin Hunt and Vice President for Information Technology Candy C. Fleming

DATE: November 11, 2020

RE: Use of Streaming Videos by Faculty

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You asked for guidance on the use of streaming videos by faculty during remote instruction. The following is a summary of the laws that should be considered by faculty and resources made available by the Library and Information Technology.

## **Legal Considerations**

Faculty are permitted to use copyrighted material when it has permission from the copyright holder. The University has entered into numerous contracts for the use of copyrighted streaming material and makes the material accessible to faculty and students on the Library's webpages through the use of a University assigned NETID and password. Faculty should first attempt to ascertain whether the materials it intends to use are available through the Library under these agreements with the University.

If copyrighted materials are not available for use pursuant to an Agreement with the University, the U.S. Copyright Act provides exceptions that permit the use without permission from the copyright holder. The following exceptions are most relevant to faculty seeking to use copyrighted works during instruction.

First, faculty are permitted to display and perform copyrighted works in a classroom or other physical space devoted to instruction (like a lab or studio) as long as the work is related to the instruction. 17 U.S.C. 110(1). Therefore, if faculty show, play, display or perform the copyrighted work on campus as part of instruction to students, permission from the copyright holder is not necessary.

Second, faculty are permitted to display and perform digital works in a remote learning environment. 17 U.S.C. 110(2). However, the on-line classroom must require the use of login credentials to ensure the materials are not made publicly available. Id. In addition, dramatic audiovisual works (movies) cannot be shown in their entirety and may be shown only in "reasonable and limited portions." Id. Therefore, faculty are permitted to use and display copyrighted materials in a remote learning environment (e.g. Canvas) that requires students to use a University assigned NETID and password. However, faculty may not live stream an entire movie in a remote environment without a license. If the on-line course requires remote delivery of an entire dramatic work, we recommend using the streaming videos available through the Library and,

if unavailable through the Library, faculty should explore accessing the entire dramatic work through Netflix, Hulu, Amazon or other resource where many films are readily available for free or after payment of a relatively low fee.

Third, the “fair use” and copying of copyrighted work without permission of the copyright holder is permitted for teaching. 17 U.S.C. 107. However, in order to determine if the use is fair, the following factors must be considered: 1) whether the purpose and character of the use is for a non-profit educational purpose or commercial use; 2) the nature of the copyrighted work; 3) the amount of the work used in relation to the copyrighted material as a whole; and 4) the effect of the use upon the potential market for, or value of, the copyrighted work. *Id.* Fair use depends upon the circumstances of each situation and there is rarely a clear, definitive yes or no answer. There are two good tools to help determine if a use is fair: 1) Columbia University has developed a Fair Use Checklist which can be found on its website: <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html#The%20Checklist%20as%20a%20Road%20Map>; and 2) the American Library Association has developed a Fair Use Evaluator which is posted on its website: <https://librarycopyright.net/resources/fairuse/index.php>. Faculty must engage in this analysis any time they wish to use copyrighted material under the fair use exception.

Fourth, the work product of the U.S. government may be used by faculty without permission if placed in the public domain within the United States of America and prepared by an officer or employee of the U.S. government as part of their official duties. 17 U.S.C. 105. Notably, this exception does not apply to work created by State, local or foreign governments. The exception also does not apply to work product created by contractors hired by the U.S. government or work created by a U.S. government employee outside of their official duties. This exception also does not apply to materials for which the U.S. government has obtained a copyright. In order to ascertain the material is available for use, faculty should look for a statement on the work that it has been placed in the public domain and verify the authors/creators are employees of the U.S. government or, when in doubt, contact the government agency and verify the material is available for public use.

Copyright infringement by faculty or a student can expose the University to penalties imposed under the U.S. Copyright Act. Each act of willful infringement is subject to a \$150,000 penalty, and each work that is innocently infringed may be penalized in a range from \$750 to \$30,000. To protect the University from potential penalties, streaming videos should be restricted for access only to students, instructors, or teaching assistants enrolled in the course. In addition, copyrighted content should be made available for use and display only for the period of time needed. Moreover, entire dramatic works should never be displayed in their entirety in a remote environment, and all copyrighted materials should be excerpted as appropriate to limit the possibility of having an effect upon its potential market.

### Library Resources

The Library subscribes to several databases that provide streaming access to thousands of educational, documentary and feature film videos. The videos may be searched for in the Library's online catalog and viewed by MSU students, faculty, and staff by logging in using their MSU net ID and password. There is no limit on the number of simultaneous viewers, and faculty may provide

links in CANVAS to the videos. Library databases can be found on the University's website here: <https://montclair.libguides.com/az.php>.

### Information Technology Resources

The University has a license to use Panopto, which is an all-in-one multimedia platform that provides desktop lecture recording, automatic captioning services and features for learning interactions with a video. Panopto provides the recommended security by enabling faculty to post and share video and audio content, and access by students requires the use of University assigned credentials. Panopto also seamlessly integrates with Canvas, and access also requires students to use their University assigned NetID and password. By default, a video in Panopto is not downloadable by students unless faculty change the setting to make it downloadable. To avoid the potential for copyright infringement, faculty could opt never to change the default setting in Panopto to ensure the video cannot be downloaded by students. Instructions for using Panopto can be found on the University's website at: <https://www.montclair.edu/information-technology/panopto/>.