LEWIS UNIVERSITY

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Section 1 provides guidance for distance education and any face-to-face teaching that has online, web-enhanced, transmitted or broadcast components. It also includes mandatory language that should be placed on your Blackboard shell**.**

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Section I – The TEACH ACT

The TEACH Act

Introduction

The Technology, Education provides copyright guidelines on distance education as well as face-to-face teaching that has an online, web-enhanced, transmitted or broadcast component.[1] TEACH exempts from liability the digital transmission of a performance or display of a copyrighted work by an accredited non-profit educational institution for officially-enrolled students. ***TEACH does not cover making textual materials available to students*.**

You must ensure that the performance or display is:

Part of systematic mediated instructional activity for officially-enrolled students.

At the direction of or under the actual supervision of the instructor.

An integral part of a class session.

Directly related and of material assistance to teaching the course.

Marked with an appropriate notice per item 7 below.

All copies that are transmitted must be lawfully made and acquired copies. The performance and display may be received anywhere as long as the following technological conditions are met. The University and you:

Must apply technological measures that reasonably prevent recipients from retaining works beyond the class session and further distributing them.

May not interfere with technological protections taken by copyright owners.

6. *Download Controls*

   Reasonable measures must be taken to prevent retention and/or dissemination of electronic works for longer than the prescribed time period. Copyrighted electronic materials such as video and audio should be streamed to avoid the downloading.

7. *Notices*

   Faculty must place the following notice prominently within each course site:

   "The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated."

Section II – Notes re: the TEACH act

Notes Re: TEACH Act

VIDEO, AUDIO & SLIDES

1. **You may not make copies of audio, video or text CD's as a backup.** There is no provision in the Act to make copies as backup copies with the one exception under section 117 of computer programs.
2. **Copying an entire video is infringement.** Individual instructors who infringe copyrights remain liable even with TEACH. TEACH has no effect on e-reserves.
3. **It may be permissible to stream a movie clip from one semester to the next.** Under TEACH, performances of a reasonable portion of a video are not restricted to one-semester use while the reproduction and distribution of print material under the Guidelines on Multiple Copying for Classroom is restricted to one semester use without permission. This is because these materials are reproduced in multiple copies. The difference is that the movie clip cannot be downloaded by students and is only performed and not duplicated by or for students.
4. **If the slides are provided from the library's collection or found on the web, then the website should be password protected.** If these slides are provided by the publisher to accompany a textbook, then the instructor should consult with the publisher to determine if slides are provided to be uploaded onto a website and whether permission is needed if the website is not password protected.

   Note: Any slides placed in a Blackboard shell are password protected.

DISTRIBUTING PRINT MATERIALS

1. **A teacher is only allowed to print items from the web and make copies for classroom distribution if the use is within the boundaries of fair use and the Guidelines on Multiple Copying for Classroom Use.** There are word and other limitations within the guidelines as well as the one-term restriction on use. Another alternative is simply to provide the students with a link to materials on the web, which entirely avoids printing and distribution by the teacher. The University strongly encourages using links as opposed to printing and distribution. The University takes a

2. **There is no grandfather clause with respect to items that one has used for a number of years.** The teacher should seek permission now to use such materials. In doing so, however, it is not necessary to admit that the instructor has used the same material for a number of years.
3. **If the instructor does not post improper material, there are no issues for students printing materials from a password protected course.** Keep in mind, however, that TEACH does not cover third-party supplemental materials, such as textbooks or course materials. If a student prints such supplemental materials from a password protected course, this would constitute infringement since it affects the value of the potential market for such supplemental materials.

ONLINE COURSES & PORTIONS OF COURSES

1.

Section III - The Fair Use Doctrine

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something new or of new utility, such as quotations incorporated into a paper, and pieces of a work mixed into a multimedia product for teaching. The use of works in the context of criticism or critical analysis may

permitted.

Nature of the Copyrighted Work

This factor examines characteristics of the work being used. Quite simply, courts have tended to apply fair use differently to different types of works. For example, courts have concluded that the unpublished nature of a work is a fact weighing against fair use. Courts more readily favor the fair use of nonfiction, as opposed to fiction and other highly creative works, including novels, short stories, poetry, and modern art images. Only those portions of the work that are relevant to a purpose favoring fair use should be used. Instructors should carefull

pages that are meant to be used and repurchased, as their use is less likely to qualify as fair use.

Amount of the Work Used

Amount is measured both **quantitatively** and **qualitatively**. No exact measures of allowable quantity exist in the law. Quantity must be evaluated relative to the length of the entire work and in light of the amount needed to serve a proper objective. The amount taken from the work should be narrowly tailored to serve these purposes. Any copying of an entire work, or even multiple chapters of an entire work, would no be considered fair use. Images generate serious controversies because a user nearly always

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Section IV – The Introduction and Guidelines for the Fair Use Checklist

Introduction and Guidelines for the Fair Use Checklist

The fair use checklist is a tool to assist you in making a reasoned and balanced application of the four fair use factors in determining whether a given use of a work is a fair use. The checklist outlines various factual circumstances that are important to the evaluation of a contemplated fair use. It derives from the four fair use factors and from judicial decisions interpreting copyright law.

As you use the checklist and apply it to your proposed use, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others will weigh against fair use. The ultimate concern is whether the cumulative weight of the factors weighs in favor of fair use or weighs against fair use. Because you are most familiar with your project, you are probably best positioned to make that decision.

Before using the checklist to conduct a fair use analysis, the following threshold questions should be considered:

1. You should first determine whether the work to be used is protected by copyright. If not, a fair use analysis is not necessary. For example, works created by U.S. government employees as part of their official duties are not protected by copyright. Works first published prior to 1923 are no longer protected by copyright. All materials first published after 1978 should be presumed to be protected by copyright, even if no copyright notice is present.
2. You do not need to conduct a fair use analysis if you or your institution has a license (or permission) to use the work and your use falls within that license. For example, some materials are distributed with a license that specifically allows for nonprofit educational

Fair Use Guidelines – Text

Copies for Educational Use

The United States Copyright Office published "basic information on some of the most important legislative provisions and other documents dealing with reproduction by librarians and educators." The advice contained in the Copyright Office's document is neither legal advice nor law, but contains some useful guidelines to making copies for educational purposes. These guidelines are more like a minimum threshold for fair use; a use exceeding these guidelines may still be protected as fair use.

Research or Teacher Preparation Uses (single copy)

Poetry, prose, non-fiction, and images:

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A) A chapter from a book;

B) An article from a periodical or newspaper;

C) A short story, short essa

D) A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

2. "For academic purposes other than performance, single or multiple copies of excerpts may be provided," although limited by how much of a work may be copied.

Section V - Fair Use Checklist

FAIR USE CHECKLIST

Name: _____ Date: _____

Project:

_____

Nature

Favoring Fair Use

Published Work
Factual or nonfiction based
Important to favored educational objectives

Opposing Fair Use

Unpublished work
Highly creative work (art, music, novels, films, plays)
Fiction

Amount

Favoring Fair Use

Small Quantity
Portion used is not central or significant to entire work
Amount is appropriate for favored educational purpose

Opposing Fair Use

Large portion or whole work used
Portion used i

Effect

Favoring Fair Use

User owns lawfully acquired or purchased copy of original work
One or few copies made
No significant effect on the market or potential market for copyrighted work
No similar product marketed by the copyright holder
Lack of licensing mechanism

Opposing Fair Use

Could replace sale of copyrighted work
Significantly impairs market or potential market for copyrighted work or derivative

Section VI - Software

Software

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Section VII – Audiotaping, Videotaping and Archiving Live Classrooms

Wikipedia

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Section X - Appendix Two –

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