



# Fair Use during times when schools and libraries are closed due to pandemic

This information should be taken as a guide and not as a final determination of the law.

In the gray areas of Copyright and Fair Use, clarification of the laws usually occurs in the courtroom. The items that are checked as “can probably do” have not been litigated in a courtroom - or at least no court has ever made an award against doing them. Let your ethics be your guide. Ask yourself, if I were the creator, what would my expectations of others be?

The two most important factors to consider when determining fair use are:

- 1) Purpose (Schools and libraries are closed due to Covid 19, teachers have been forced to take their in person instruction to online instruction with no time to adequately prepare materials)
- 2) Market share (I think this is usually the one that people get sued over - if this keeps someone from earning fair compensation, it is usually wrong)

| Scenario                                                                                                                                                                                                                        | Can Do | Probably Can Do | Do Not Do | Notes                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Videos</b>                                                                                                                                                                                                                   |        |                 |           |                                                                                                                                                                                                      |
| Show parts of a legally obtained copy of a movie that I normally show in my class.                                                                                                                                              |        | X               |           | Must be a “live” meeting; best practice to show in segments as you would in a physical class setting                                                                                                 |
| Have students watch a movie on a service you <u>may</u> have a subscription to at your school like Discovery Ed (Ask your librarian)<br><b>NOTE: Ask your school librarian about your free access to SWANK streaming video!</b> | X      |                 |           | Provide links to the movie or video clip behind a LMS or Google Classroom - Do not put usernames and password out on the internet, they can be sent through email or posted on your Google Classroom |
| Link out to a movie on Youtube and ask students to watch the movie<br><b>NOTE: Ask your school librarian about your free access to SWANK streaming video!</b>                                                                   |        | X               |           | There has yet to be a prosecution for merely supplying a link to something... <u>ethically may be questionable</u> ...In other times I would encourage you to obtain a legal copy of the movie       |
| Upload a DVD I purchased to Youtube and provide the link to students to watch                                                                                                                                                   |        |                 | X         |                                                                                                                                                                                                      |

## Pictures

|                                                                                                                   |   |   |       |                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------|---|---|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| Using pictures in my online class for instruction                                                                 |   | x |       |                                                                                                                                     |
| Using pictures to enhance the aesthetics of my website<br>Depends on usage rights...<br>I can't find copyright... |   |   | Avoid | Creative commons licensed photos may have stipulations on how they want you to give attribution. Make sure you read to find out how |
| Creative Commons - with attribution                                                                               |   | x |       |                                                                                                                                     |
| A Photo I took                                                                                                    | X |   |       |                                                                                                                                     |
| A photo in the public domain                                                                                      | X |   |       |                                                                                                                                     |
|                                                                                                                   |   |   |       |                                                                                                                                     |
|                                                                                                                   |   |   |       |                                                                                                                                     |

## Texts/ Books

|                                                                                                                            |   |   |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------|---|---|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Digitize a copy of a book that we normally read and own class sets of and then loan "copies" to students                   |   | X |  | If a school has x print copies but those copies are in-accessible to students, only x number of students may access the title at a time. The digitized copy must be shared in a protected platform. Students must not have the ability to download, share, save, edit, etc. The digital copy must be returned/revoked when the loan period is over. When access to the physical copies resumes, the digital version must be deleted. (Google classroom has a feature to lock permissions from a student for a file, and remove the file from the google classroom when finished. See instructions <a href="#">here</a> ) |
| Have students check books out from Overdrive (Sora)<br><b>You all have access to Overdrive (Sora). Ask your librarian!</b> | X |   |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Assign students to read books from a subscription service like Tumblebooks                                                 | X |   |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Copy a small quantity of pages or text and use to create an assignment I will                                              |   | X |  | This should fall under fair-use without a problem.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                                                                          |  |   |       |                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------|--|---|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| share using Google Classroom                                             |  |   |       |                                                                                                                                                                                                                                                                                                                                             |
| Record myself reading a book aloud and<br>Posting it to google classroom |  | X |       | If an author or publisher has given permission- follow their guidelines. Many have put some restrictions on their permissions; While posting on youtube or another open platform is possible, it isn't advisable. If possible, use a private youtube channel and post a link in Google classroom or your LMS <a href="#">Read more HERE</a> |
| Posting it to Youtube/Facebook or my website                             |  |   | Avoid |                                                                                                                                                                                                                                                                                                                                             |

### Educational Practices Enabled by Fair Use

In the following cases, after thinking through the educational purpose of the use, educational communities can rely on fair use to translate in-person teaching practices to the digital context:

- 1) A teacher reads an introductory segment of a nonfiction text aloud to provide students with background material, and offers pre-recorded segments for students to choose to listen to next so that students can select their own learning paths.
- 2) A teacher who regularly begins a class session with a chapter from a novel, to orient students in the physical classroom and to get them focused for learning, adapts that practice for virtual learning:
  - a) Translating this practice to online learning by posting one chapter per day on a learning management system as an introductory exercise; and
  - b) Streaming this on a commercial platform, such as Facebook or Instagram, to prompt students to get online and start focusing on classroom work.
- 3) In an online recording posted to a LMS, a teacher reads a few introductory paragraphs from a commercial textbook and goes on to highlight (and display on video) segments of the reading (that students are going to do independently). The teacher goes on to read the textbook's first discussion question and to provide additional context and directions for the students' work.
- 4) A teacher reads and shows two picture books to a class as part of a longer 30-minute lesson including discussion questions and context:
  - a) The teacher is doing this for English language learners, interspersing reading from the book with scaffolding questions in students' home language; and
  - b) The more the readings are contextualized, the less concern there need be about the platform on which they are offered.
- 5) Teachers and students collaborate to read texts in parallel, contributing to a distributed reading project that documents both shared experiences and diverse voices.
  - a) Recordings of classmates reading aloud document students' voices and experiences.
  - b) Reading projects coordinated between schools and geographic locations create connections and learning opportunities for students to experience



*Reading Aloud: Fair Use Enables Translating Classroom Practices to Online Learning* by Meredith Jacob et al is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/) and is available at <https://tinyurl.com/read-aloud-online>

More Guidance: [https://docs.google.com/document/d/1LA\\_jpCideAu0hFI4TiPZ6EqpZZ9Jh5Xo1kdBt0k8LDA/edit#](https://docs.google.com/document/d/1LA_jpCideAu0hFI4TiPZ6EqpZZ9Jh5Xo1kdBt0k8LDA/edit#)

[Fair Use - Scholarly Communication Toolkit - LibGuides at ACRL](#)

Copyright or public domain? flow chart:

<https://sunsteinwebdocs.s3.amazonaws.com/documents/pdf/SunsteinCopyrightFlowchart.pdf>

Images flow chart:

[How Do You Know If Something Is in the Public Domain? \[Flow Chart\]](#)

Fair Use Checklist:

[FairUse Checklist \(2-23-05\)](#)

If you're more of a chart person:

[Copyright Term and the Public Domain in the United States](#)

Primary documents Q&A Library of Congress

[Copyright and Primary Sources | Teacher Resources](#)

Webinar:

[https://ala-events.zoom.us/rec/share/-ZRqDbWz8UZJHqPx2mDOYbQOPJj4T6a81iQW\\_qUOzx0mpApFc9iqUAaA91n3l0wy](https://ala-events.zoom.us/rec/share/-ZRqDbWz8UZJHqPx2mDOYbQOPJj4T6a81iQW_qUOzx0mpApFc9iqUAaA91n3l0wy)

OERs: [Making Connections: Open Educational Resources in PreK–12 Education](#)