



COPYRIGHT & ONLINE LEARNING

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○ NOT LEGAL ADVICE ○

NOTE THAT NONE OF THIS APPLIES
TO CONTENT THAT IS LICENSED
FOR USE (DATABASES) - READ THE
CONTRACT FOR WHAT IS ALLOWED

WHICH PART OF COPYRIGHT APPLIES?

<https://www.law.cornell.edu/uscode/text/17/110>

SECTION 110(1)

FACE-TO-FACE TEACHING

Anything can be performed or displayed in face-to-face instruction (some restrictions apply, no copies).

SECTION 110(2)

ONLINE TEACHING

There are more restrictions on what can be used for online teaching (but copies may be okay at times).

“the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission”

“the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission”

TO PERFORM MEANS TO “RECITE, RENDER, PLAY, DANCE, OR ACT IT, EITHER DIRECTLY OR BY MEANS OF ANY DEVICE OR PROCESS”

“the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, **or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session**, by or in the course of a transmission”

TO DISPLAY MEANS TO “SHOW A COPY OF IT, EITHER DIRECTLY OR BY MEANS OF A FILM, SLIDE, TELEVISION IMAGE, OR ANY OTHER DEVICE OR PROCESS”

SECTION 110(2) ALLOWS YOU TO...

PERFORM

All of a literary or musical work, so you can read a book aloud, but no showing pictures.

PERFORM

A reasonable and limited (?) portion of other types of work like clips from a digital video.

DISPLAY

Most things as long as they meet requirements, so you can display picture books.

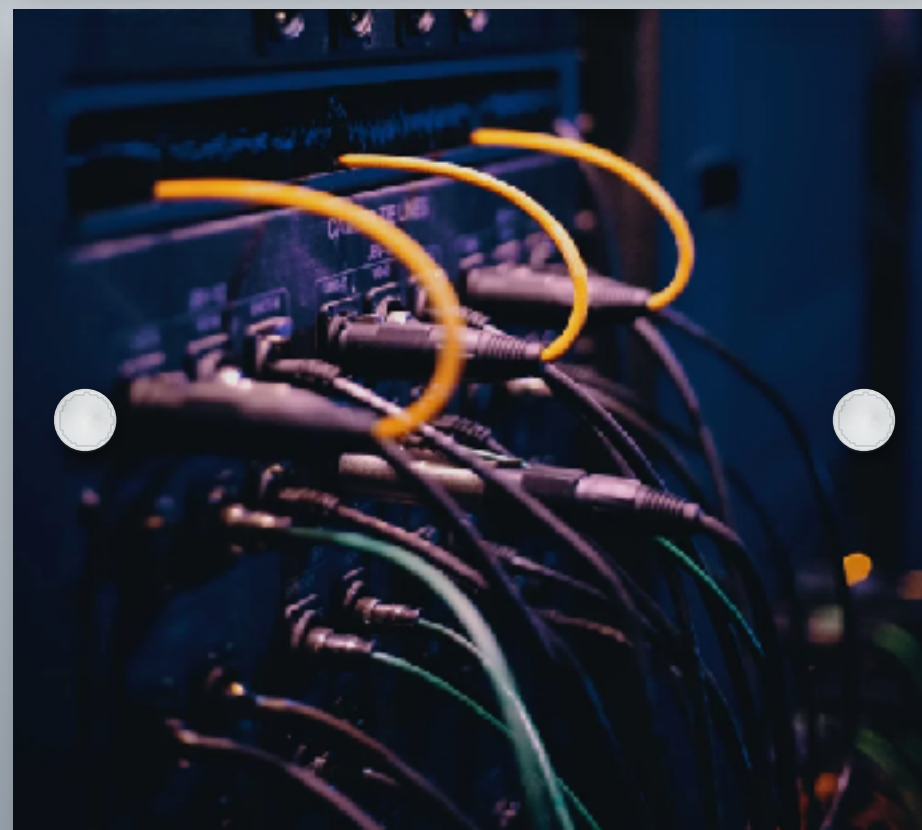
TEACH ACT'S
THREE TESTS
SECTION 110(2)



(A) THE TEACHER TEST



(B) THE INSTRUCTION TEST



(C)/(D) THE SCHOOL TEST



THE TEACHER TEST

- TEACHER AT AN ACCREDITED NONPROFIT EDUCATIONAL INSTITUTION
- USE IS BY, AT THE DIRECTION OF, OR UNDER SUPERVISION OF, TEACHER
- REGULAR PART OF MEDIATED INSTRUCTIONAL ACTIVITY

“INSTRUCTIONAL ACTIVITIES”

“The concept of ‘systematic instructional activities’ is intended as the **general equivalent of ‘curriculums,’** but **it could be broader in a case such as that of an institution using systematic teaching methods not related to specific course work.** A transmission would be a **regular part of these activities if it is in accordance with the pattern of teaching established** by the governmental body or institution.”

LIMITATIONS TO INSTRUCTIONAL ACTIVITIES

“The term does not refer to activities that use, **in 1 or more class sessions of a single course**, such works as **textbooks, course packs, or other material in any media, copies** or phonorecords of which...are **typically purchased or acquired for elementary and secondary students for their possession and independent use**.



THE INSTRUCTION TEST

- ❑ IS DIRECTLY RELATED TO CONTENT
- ❑ IS OF MATERIAL ASSISTANCE TO INSTRUCTION
- ❑ AMOUNT COMPARABLE TO THAT TYPICALLY DISPLAYED IN THE COURSE OF A LIVE CLASSROOM SESSION



THE SCHOOL TEST

- EXISTING COPYRIGHT POLICY
- ACCESS RESTRICTED TO THE COURSE
- TECHNOLOGY TO PREVENT COPYING/SHARING
- SCHOOL DOES NOT CIRCUMVENT PROTECTION

CHECKLISTS

AVOIDING 22 CHECKS

Use this handy checklist to see if you are ready to use the TEACH Act

- My institution is a nonprofit accredited educational institution or a government agency
- It has a policy on the use of copyrighted materials
- It provides accurate information to faculty, students and staff about copyright
- Its systems will not interfere with technological controls within the materials I want to use
- The materials I want to use are specifically for students in my class
- Only those students will have access to the materials
- The materials will be provided at my direction during the relevant lesson
- The materials are directly related and of material assistance to my teaching content
- My class is part of the regular offerings of my institution
- I will include a notice that the materials are protected by copyright
- I will use technology that reasonably limits the students' ability to retain or further distribute the materials
- I will make the materials available to the students only for a period of time that is relevant to the context of the class session
- I will store the materials on a secure server and transmit them only as permitted by this law
- I will not make copies other than the one I need to make the transmission
- The materials are of the proper type and amount the law authorizes
 - Entire performances of nondramatic literary and musical works
 - Reasonable and limited parts of a dramatic literary, musical, or audiovisual work
 - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- The materials are not among those the law specifically excludes from its coverage:
 - Materials specifically marketed for classroom use for digital distance education
 - Copies I know or should know are illegal
 - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session
- If I am using an analog original, I checked before digitizing it to be sure:
 - I copied only the amount that I am authorized to transmit
 - There is no digital copy of the work available except one with technological protections that prevent my using it for the class in the way the statute authorizes

WHAT TEACHERS NEED TO THINK ABOUT

THE TEACHER TEST

- I AM THE ONE USING THE CONTENT OR I AM DIRECTING/SUPERVISING THE USE OF CONTENT BY GUESTS/STUDENTS
- THIS PART OF A REGULAR CLASS
- I AM NOT SHARING A TEXTBOOK OR CONSUMABLE MATERIALS

THE INSTRUCTION TEST

- THIS CONTENT IS DIRECTLY RELATED TO WHAT IS BEING TAUGHT IN THE CLASS
- THIS CONTENT IS HELPING ME TEACH
- I AM USING AN AMOUNT SIMILAR TO WHAT I WOULD USE FACE-TO-FACE

WHAT ADMIN NEEDS TO HANDLE

POLICIES

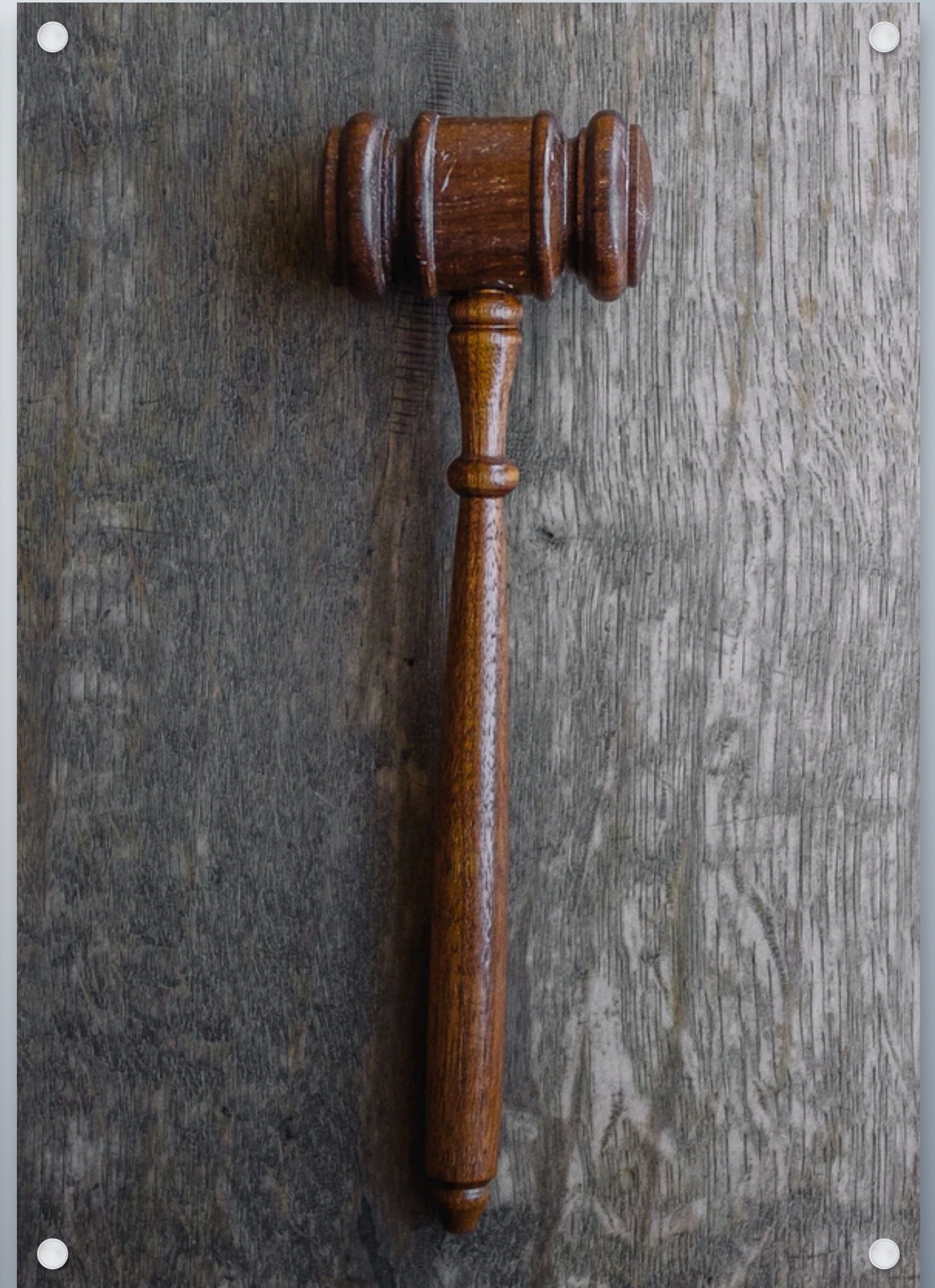
- THERE IS A COPYRIGHT POLICY IN PLACE
- TEACHERS KNOW NOT TO TRY AND CIRCUMVENT COPYRIGHT PROTECTION
- STUDENTS KNOW NOT TO SHARE OR COPY MATERIAL FROM THEIR COURSES

TECHNOLOGIES

- THE LEARNING MANAGEMENT SYSTEM RESTRICTS ACCESS TO MATERIAL
- THE RESOURCES SHARED IN THE LMS ARE REASONABLY PROTECTED
- SCANNING TECHNOLOGY IS AVAILABLE

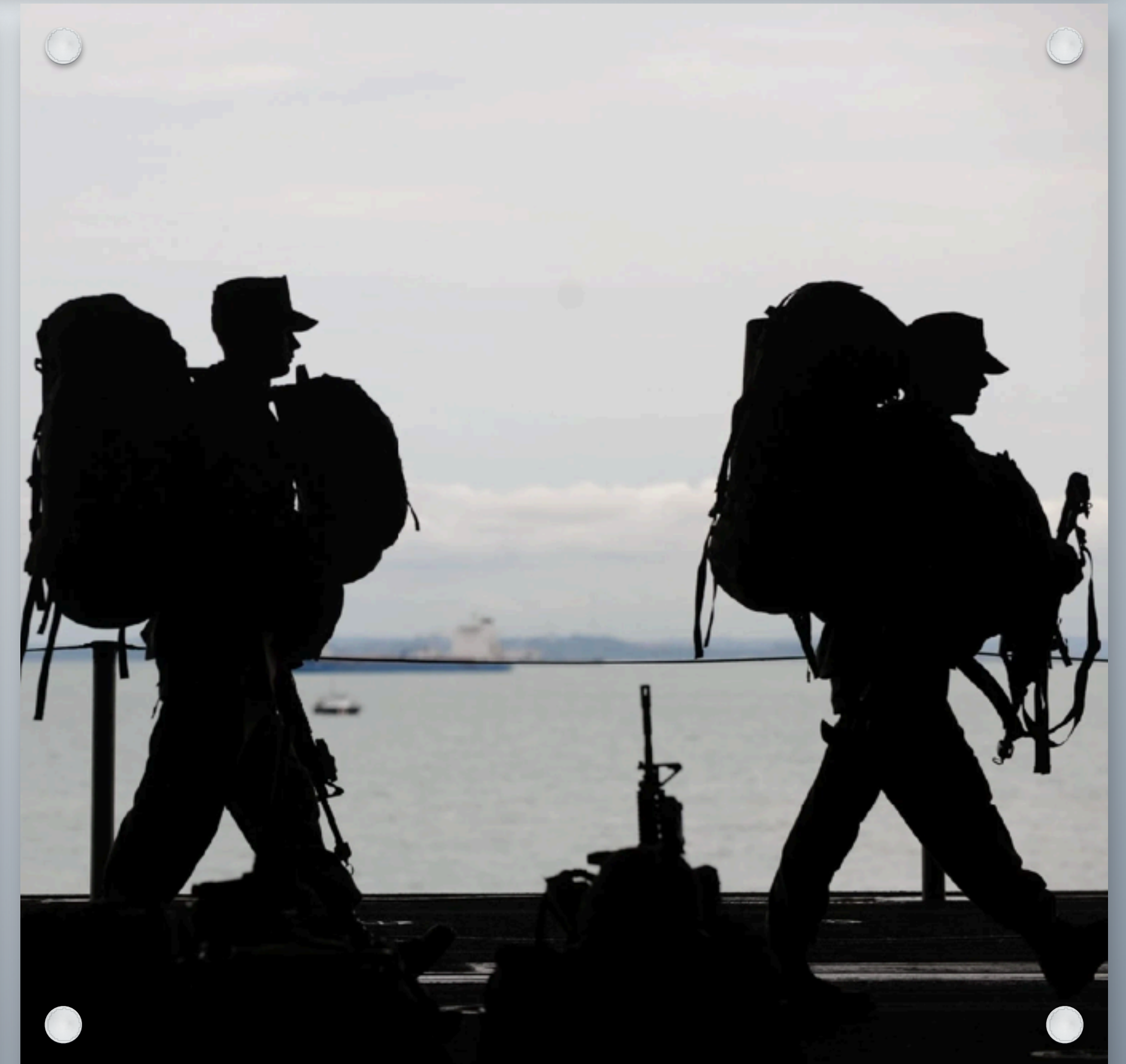
SECTION 110(2) SCENARIOS

UNLESS SPECIFICALLY MENTIONED, ASSUME THAT THE SCHOOL TEST PASSES, I.E. THAT THE ORGANIZATION HAS A COPYRIGHT POLICY AND IS USING APPROPRIATE TECHNOLOGIES TO LIMIT/CONTROL ACCESS AND THAT ALL CONTENT HAS BEEN LEGALLY ACQUIRED.



SCENARIO 1

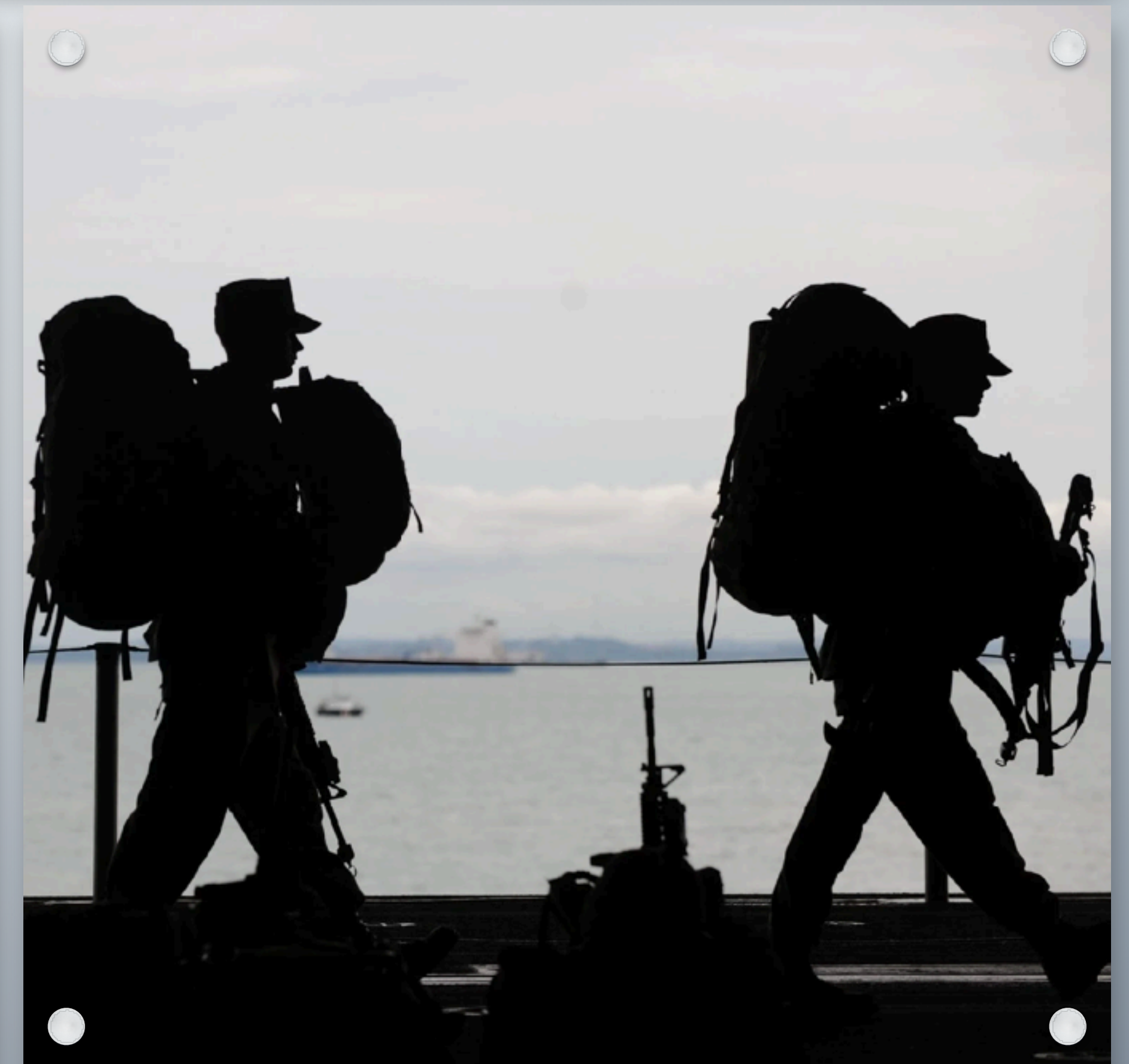
- A teacher wants to upload short clips from five different Hollywood movies about recent wars and stream them to students so the students can compare/contrast the representations from each.



SCENARIO 1

YES

- Section 110(2) allows the teacher to perform (stream) “reasonable and limited portions” of movies assuming all other requirements are met in terms of acquiring and performing the videos.



SCENARIO 2

- A teacher wants to play an audiobook version of a novel that the class is reading during daily Zoom sessions to help students who are struggling to read the book on their own.



SCENARIO 2

NO

- Section 110(2) only allows the teacher to perform (stream) “reasonable and limited portions” of audiobooks and you can’t display the print book because it would typically be acquired for each student. **The teacher could, however, read the book aloud her/himself during each live Zoom meeting.**



SCENARIO 3

- A teacher wants each of the 243 students in the 9th grade to access a copy of an article from *The Atlantic* so that they can read and annotate it as part of an English assignment.



SCENARIO 3

YES

- Section 110(2) allows the teacher to display (make available to view) one article as “an amount comparable to that which is typically displayed in the course of a live classroom session” but she/he might need some additional tech as well to support annotations without copies.

<https://flowpaper.com/annotate-pdf-documents-online/>



SCENARIO 4

- A librarian was invited to read a picture book and show the pictures to a class during a Zoom meeting, but also have the book available online for students to practice re-reading and to use as a source for answering questions in followup work.



SCENARIO 4

YES - BUT HOW?

- Section 110(2) allows a guest of the teacher to perform the literary work as well as display the images. Making the book available for continued displays would probably be okay as copies wouldn't typically be purchased for all students.



SECTION 112(F)
MAKING COPIES

“it is **not an infringement** of copyright for a governmental body or other **nonprofit educational institution** entitled under section 110(2) to **transmit a performance or display to make copies or phonorecords of a work that is in digital form** and, solely to the extent permitted in paragraph (2), **of a work that is in analog form, embodying the performance or display to be used for making transmissions** authorized under section 110(2)”

SECTION 112(F)

“TO THE EXTENT PERMITTED IN PARAGRAPH (2)”

- ❑ COPIES ARE HELD AND USED ONLY BY THE ORGANIZATION THAT MADE THEM
- ❑ COPIES ARE ONLY USED FOR 110(2) ALLOWABLE TRANSMISSIONS
- ❑ IF NO DIGITAL EDITION IS AVAILABLE
- ❑ OR IF ONLY PROTECTED DIGITAL COPIES AVAILABLE





TOO GOOD TO BE TRUE

Thwack!

Bean was grinding corn. She put a few pieces of Indian corn on the sidewalk and then smacked a rock down on top of them. *Thwack!* It hardly dented them, but that was okay. That was part

[FLOWPAPER.COM](https://www.flowpaper.com)

PROTECT PDFS WHILE DISPLAYING THEM

BUT MANY COLLEGES DON'T
USE SECTION 110(2) ANYWAY

“EVEN IF WE RELY ON AND FIND
110(2) HELPFUL, FAIR USE WILL STILL
FIGURE HEAVILY IN OUR EXERCISE OF
PERFORMANCE RIGHTS BECAUSE
PUTTING ANYTHING ONLINE
REQUIRES MAKING A COPY OF IT”

– [HTTPS://GUIDES.LIB.UTEXAS.EDU/COPYRIGHT/TEACHACT](https://guides.lib.utexas.edu/copyright/teachact)

FAIR USE RIGHTS - SECTION 107

“Notwithstanding the provisions of sections 106 and 106A, **the fair use of a copyrighted work**, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, **teaching (including multiple copies for classroom use)**, scholarship, or research, **is not an infringement of copyright.**”

FOUR FACTOR TEST FOR FAIR USE



**PURPOSE AND
CHARACTER**



**NATURE OF
THE WORK**



**PORTION TO
BE USED**



**MARKET
IMPACT**

THE CRITICAL TESTS FOR FAIR USE

- ❑ Is the use you want to make of another's work transformative -- that is, does it add value to and repurpose the work for a new audience?
- ❑ Is the amount of material you want to use appropriate to achieve your transformative purpose?

SO WHAT IS TRANSFORMATIVE?

- ❑ "HAS THE MATERIAL TAKEN FROM THE ORIGINAL WORK BEEN TRANSFORMED BY **ADDING NEW EXPRESSION OR MEANING**?"
- ❑ "WAS VALUE ADDED TO THE ORIGINAL BY **CREATING NEW INFORMATION, NEW AESTHETICS, NEW INSIGHTS, AND UNDERSTANDINGS**?"

[HTTPS://WWW.NOLO.COM/LEGAL-ENCYCLOPEDIA/FAIR-USE-WHAT-TRANSFORMATIVE.HTML](https://www.nolo.com/legal-encyclopedia/fair-use-what-transformative.html)

THE **TEACHER** HAS TO
DECIDE IF IT IS FAIR USE.

ADDITIONAL RESOURCES

- **CORNELL LAW TOOLBOX:** [HTTPS://WWW.LAW.CORNELL.EDU/USCODE/TEXT/17/CHAPTER-1](https://www.law.cornell.edu/uscode/text/17/chapter-1)
- **UTEXAS TEACH ACT GUIDE:** [HTTPS://GUIDES.LIB.UTEXAS.EDU/COPYRIGHT/TEACHACT](https://guides.lib.utexas.edu/copyright/teachact)
- **COLUMBIA COPYRIGHT GUIDE:** [HTTPS://COPYRIGHT.COLUMBIA.EDU/BASICS/COPYRIGHT-QUICK-GUIDE.HTML](https://copyright.columbia.edu/basics/copyright-quick-guide.html)
- **STANFORD COPYRIGHT AND FAIR USE:** [HTTPS://FAIRUSE.STANFORD.EDU/OVERVIEW/](https://fairuse.stanford.edu/overview/)



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