

# Auraria Library Digitization Policy

The Auraria Library makes every effort to adhere to United States copyright law.

There is a common misconception that any published work can be reproduced, networked, or otherwise copied when it's used for an educational purpose. Unfortunately, copyright law is restrictive and greatly limits the Library's ability to reproduce materials, even materials copied or re-formatted for an educational purpose.

Fair use outlines certain conditions under which copyright protected material may be used without permission. Not all educational use of materials qualifies as fair use. Fair use depends on a reasoned and balanced application of four factors: the purpose of the use; the nature of the work used; the amount of the work used; and the effect of the use on the market for the original. Any material that the Library is requested to digitize will be subject to a copyright license and fair use analysis.

The Library can provide information about copyright, but it cannot give legal advice. The following sections provide more detailed information on Library policy regarding digitization and how the Library interprets copyright and fair use legislation in the processing of common media requests.

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## Copyright Policy for streamed delivery of digital video/DVD

### Introduction

Auraria Campus student, staff and faculty sometimes use sound recordings, texts, and still and moving image materials in their teaching. These forms of media are used in physical classrooms, and are also used by students for review and further study outside the classroom. Many of the audiovisual materials used in teaching are held in the Auraria Library. Students enrolled in certain courses rely on the Library to provide access to this important material.

With the growth of computing technology, faculty and students increasingly expect that their primary media access tool will be a desktop computer. The Auraria Library and the Creative Technology Commons interprets the fair use clause of the United States Copyright Law, section 107, to allow for

digitization and networked delivery of audio and video materials owned by the library under certain circumstances. The parameters of this service and a discussion of fair use follows:

## Policy

Creative Technology Commons will digitize complete video recordings or portions of recordings if:

1. The title is licensed to be digitized by the Auraria Library.

OR

2. The teaching instructor obtains written permission from the copyright holder to digitize a film governed by the Digital Millennium Copyright Act.

OR

3. The title is in VHS format and an equivalent DVD or streaming copy is not commercially available at a reasonable cost.

AND

4. The item requested by a teaching faculty member or instructor is in support of a course conducted by the Community College of Denver, Metropolitan State University of Denver, or the University of Colorado Denver.
5. The item is legally acquired and owned by the Auraria Library or by the teaching instructor, such as a class lecture or presentation.
6. The streamed media link is password protected.
7. The digitized, streamed media file resides on a server that is controlled and monitored by library staff.

The Creative Technology Commons will not digitize entire titles borrowed from another institution via interlibrary loan, rented from a commercial video store, or personal copies. At its discretion, Creative Technology Commons may make only short clips from such titles available in digital form. In accordance with fair use precedent, a clip may comprise no more than 10% of the work, and like any material is subject to a full copyright and fair use assessment.

The library will take advantage of fair use exceptions provided by copyright law as long as the digitization of a work can stand up to the application of the four criteria below.

## Fair use

When analyzing if there is a fair use exception, there are four factors that need to be considered for each work and circumstance. Here we offer the following description of the four fair use factors, taken verbatim from a U.S. Copyright Office website:

- *Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:* Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and

character of the use against the other factors below. Additionally, “transformative” uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.

- *Nature of the copyrighted work*: This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Thus, using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
- *Amount and substantiality of the portion used in relation to the copyrighted work as a whole*: Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.
- *Effect of the use upon the potential market for or value of the copyrighted work*: Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner’s original work. In assessing this factor, courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread.

Source: <https://www.copyright.gov/fair-use/more-info.html>

## DVD digitization and the DMCA

The Digital Millennium Copyright Act (DMCA), passed by the United States Congress and signed into law in 1998, prohibits the manufacture, sale, and use of technologies that circumvent access control technologies. The DMCA was recently modified to allow for the circumvention of a DVD for those instructors engaged in teaching film study courses. Libraries and educational institutions have struggled to understand how the DMCA, in both a legal and a practical sense, affects fair use, and, specifically, to interpret this part of the law as it pertains to DVDs. Many commercial DVDs are encrypted with a technology called a Content Scrambling System (CSS), which requires a licensed DVD playback device to access and view the video contents.

Digitizing a video title can be broken down into two steps and two separate acts: accessing the video content, and making a copy of the contents. For the first step, Creative Technology Commons employs the same readily available, licensed DVD players and analog video connections that are used for in home viewing. The act of access, therefore, cannot be said to be making an unauthorized circumvention of the CSS access control technology. The video signal accessed is unscrambled by legitimate means. Whether or not the second act, the making of a copy, violates any part of copyright law that existed before or after the Digital Millennium Copyright Act (DMCA), is addressed in the fair use discussion, above, because the DMCA specifically states: “Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.”(section 1201(c)(1)). The Auraria Library encourages faculty to seek written permission from the copyright holder, or licensed

provider prior to the digitization of DVDs encrypted with CSS. For more information see the document [\*Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies\*](#).

## **DVD digitization and the TEACH Act**

**Technology, Education, and Copyright Harmonization (TEACH) Act, 2002**

<http://guides.lib.utexas.edu/copyright/teachact>

The TEACH Act expands upon Performance and Display exemption of the US Copyright Act 110(2) which references the ability to distribute and display amounts comparable to face-to-face teaching. Faculty and students will often want to incorporate some or all of the copyrighted work of others into course materials that are to be digitized and transmitted for distance education. In the past, this could be sometimes lawfully accomplished via the fair use provisions (17 U.S.C.107) and/or the performance/display exemptions (917 U.S.C. 110(2)) of the copyright act. In November 2002, the performance and exemptions of the copyright act were revised and updated to address the digital environment. The revised provisions facilitate digital educational use of materials without requiring copyright permission, subject to several conditions. Restrictions and conditions are outlined on the website as posted above.

## **Digitization requests by copyright-holders**

In some cases, you may possess the license to the material you would like digitized, whether through copyright, Creative Commons, or alternative licensing. Examples of this may include slides from your own field research, video of a presentation you gave, papers you have written, or public domain and open source material. If you hold the copyright or appropriate usage rights to your material, you may freely share, modify, and transform it.

Please see the Auraria Library Creative Technology Commons (CTC) website for a [list of digitization equipment and software](#) currently available for use. CTC staff can provide technical assistance with the use of this equipment.