Copyright FAQs and Fair Use

Alamo Colleges periodically receives questions regarding appropriate use of copyrighted materials within the classroom. The following is a sampling of questions received regarding hypothetical situations. Please keep in mind that the purpose of this document is to provide Alamo Colleges with a better understanding of Copyright and how it applies to students and faculty. Copyright and Intellectual Property laws are complex and it would be impossible to address every fact scenario that could arise. Please remember that Alamo Colleges policies require that students and faculty comply with federal copyright laws. As such, any infringement by the use of copyrighted materials will be a violation of Alamo Colleges policy may result in **personal liability** by the student or employee. You can review the applicable policies by clicking on the following links:

1. C.1.9 Policy.pdf
2. C.1.9.1 Procedure.pdf
3. E.1.7 Policy.pdf
4. F.4.2 Policy
5. F.4.2.1 Procedure

This document and the accompanying Fair Use Checklist are meant to be informational and to provide you with some guidance, but **are not intended to be legal advice for specific circumstances**. Please remember that contacting OLS with any questions is recommended and strongly encouraged.

RULES OF THUMB

1. **Always credit the original author;**
2. **Attempt to secure permission – in writing!**
3. **Always evaluate material for "Fair Use" before using: (http://www.alamo.edu/district/legal/documents/olsdraft-copyrightfairusechecklistfinal11-2010.pdf)**
4. **Post notices regarding copyright protection at all copiers/copy centers**
5. **SAVE your Fair Use Checklists for each evaluation as proof of *good faith* evaluation.**

GENERAL INFORMATION

What is a copyright?

"Copyright" is legal protection of original works such as literary, musical, dramatic, chorographic, pictorial, graphic, sculptural, audiovisual, sound, motion picture, and architectural works. Copyright protection attaches to a work upon its creation. Copyright *registration* is not required in order for the work to be protected. There have been changes to copyright laws over the years, but as a general rule of thumb work created after January 1, 1978 is protected by copyright from inception, through the author's life and 70 years after the author's death.

What is public domain?

"Public Domain" refers only to copyright status and generally means a work that is not owned by anyone, someone does not have authority over it, it is ineligible for copyright, or its copyright protection has expired. Public Domain does not mean that the work is presented *in public*. Examples: Laws, United States Government documents, previously copyrighted works which have expired or were not renewed, works freely distributed with no restrictions on use, and works published prior to 1900.

What is "Fair Use?"

It is illegal to violate a copyright holder's rights, but there is an exemption referred to as "Fair Use." Fair Use allows for *limited* use of copyrighted works without permission considering the following criteria:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

The Office of Legal Services has developed a Fair Use Checklist which will aid you in evaluating material for use under the guidelines above.

What is the TEACH Act?

Copyright law is an evolving area of the law. As such, modifications had to be made as more and more educators participated in technologically assisted, non-traditional, educational settings such as distance and online environments. As a result, the TEACH Act amended copyright law to provide exemptions for education outside ***face-to-face*** instruction. Electronic, non-classroom delivery or performance of copyrighted works, use must be **mediated instructional activity.**

"Mediated instructional activity" refers to the display or performance of a work as an integral part of the class experience, under the control or supervision of the instructor, and that would otherwise take place in a face-to-face class setting. *17 U.S.C.A. § 110(11)* In addition, the college must ensure that it takes measures to prevent students from retaining works beyond the class session and further distributing them, and the college must not interfere with technological protections of the work. To be considered under this exception, the following is required:

1. The copy must be lawfully obtained;
2. The college must not attempt to bypass any security measure of the copyrighted work (*anti-circumvention*);
3. The work must not be retained after the class session;
4. The college must take steps to prevent unauthorized access and dissemination; and
5. The work must be an integral part of the course

What does "anti-circumvention" mean and how does it apply to me?

The Digital Millennium Copyright Act of 1998 modified copyright law to prevent circumvention of technological measures used to protect copyrighted works. Under current law, no person shall "circumvent a technological measure" that controls access copyright protected works. *17 U.S.C.A. §1201(1)(A)* By definition, "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and a technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work. *17 U.S.C.A. §1201(3)* **This means that even if you are permitted to use a protected work by Fair Use and you bypass security measures in order to access the work, then you have violated the law.**

Informational Links:

U.S. Library of Congress:
http://www.copyright.gov
http://copyright.gov/circs/circ21.pdf (Reproduction of Copyrighted Works by Educators & Librarians)
http://www.loc.gov/teachers/
http://www.loc.gov/film/studios.html (non-theatrical distributors)

Copyright Clearinghouse: http://copyright.com

Who should I contact regarding suspected copyright infringement or other copyright questions?

General Counsel
Office of Legal Services
http://www.alamo.edu/district/legal/contacts.htm
(210) 485-0050

Frequently Asked Questions

GENERAL QUESTIONS

1. Is it true that if there is no copyright symbol on a work that it's part of the public domain and free to use how I wish?
2. I heard that government documents are part of the public domain. Is that correct?
3. I'm assuming that if a work is out of print/publication, then I am free to make copies of the original. Is this a good assumption?
4. I want to use the Nike® Swoosh symbol as a link to health resources on my portal page. Am I covered by educational fair use?
5. I often use student works in presentations and publications. I'm assuming I can use these freely as I have assigned the work and students have given me permission verbally. Is this adequate? Who owns the copyright?
6. A student has asked me if they can copy images from the web and use them in a presentation that will not be posted online. Is this considered fair use?
7. What do I do if I can't find a copyright owner to seek permission?
8. If I hyperlink to another site on our page, do I have to seek permission?

PRINTED MATERIAL QUESTIONS

1. I am a professor of English. Can I distribute a copy of an article I found several years ago to every English 2332 class? I'm protected under educational fair use, right?
2. The textbooks I ordered for my classes have not arrived. (I want the library to copy the first two to three chapters of the textbook and put them on course reserve for my students – OR - I made copies of the first two to three chapters for my students). As long as I include the copyright information, I'm covered by fair use, true?
3. I've compiled a stack of articles to use for my class and would like to put together a coursepack to sell to my students– this is "Fair Use" right?
4. The bookstore doesn't have enough copies of the workbook that accompanies their textbook. I want the library to copy the first couple of workbook pages and put it on course reserve for my students. Why does it matter that this is a workbook?
5. Can I scan articles and short stories for my students and put them on the web for my students?

MOTION PICTURE & SOUND RECORDING QUESETIONS

1. I want to show *An Inconvenient Truth* to the students in my art history class, or I am showing *Rear Window* in my film class. Am I covered by educational fair use?
2. I want the media center to convert the old *Destinos* VHS tapes to DVD for archival purposes. The tapes are worn out and I think the DVDs should circulate – OR – We own a copy of the *Destinos* series on VHS but the demand for these tapes is high. I want the media center to make more copies of the original so students can check them out. Since we own the VHS tapes, there shouldn't be any violation of copyright, correct?
3. We're hosting a film series for the members of our college and surrounding community. (By the way, we are not charging anything to show the film). I assume that because we have invited students and it's being shown on our campus that we're covered by educational fair use.

4. I want to copy a program from C-Span (HBO or other non-public broadcasting station) to show to one of my classes. Is this educational fair use?
5. I am going to begin teaching a music class online. I want to show my students the Zeffirelli's version of Pagliacci. Will I be restricted in the amount I can show? *OR* Can the college upload digital motion pictures to the streaming video site for performance in distance education?
6. I have created a mash-up using clips from motion pictures, television, You Tube, and other web content. I want to put several copies of the DVD in the library for students as well as post it to my web page.
7. I am using a very small segment of a sound recording to create a new sampling. Because the segment is fewer than 20 seconds, I'm okay, right? (*Bridgeport Music v. Dimension Films* 410 F.3d 792 (6th Cir. 2004)).
8. Can I post a copy of the digital recording of a guest speaker online for students using [a]BBV, [b]Portal, [c]Web? The speaker gave us permission to *record* the lecture.

ONLINE / INTERNET QUESTIONS

1. What does it mean that to be able to show a film to my online class that it has to be part of the "systematic mediated instructional activity?"
2. Does an author give up his right to copyright and control if a work is posted on the web?
3. I'm teaching an art appreciation class through Blackboard® Vista. My students have to login using a specific username/password so I can post complete copies of materials and media from any resource, right?
4. Can I use screenshots from software/databases and post them on [a]You Tube®, [b]Portal, [c]Web, [d]BBV for the students in my Geometry class?
5. If I use lawfully obtained copies, can I compile media clips for use in my online class?
6. I've used ELLUMINATE and BBV to teach a PSYC 2371 online class. I won't be teaching this class online until next year. I want to retain all of the articles and media clips that I have posted online until I need them again. Is that a problem?
7. A student has asked me if they can copy images from the web and use them in presentations / ppt that they want to post to [a]BBV, [b]Web, [c]Portal. Is this considered fair use?
8. I know that students have pulled information and images from the web for their presentations. They've also used video clips. They are asking me if they can post these presentations for the students in other classes to You Tube. Is this a problem?

POSSIBLE INFRINGEMENT PENALTIES

1. What happens if I infringe or are accused of infringing on someone's copyright?

GENERAL QUESTIONS

1. **Question:** Is it true that if there is no copyright symbol on a work that it's part of the public domain and free to use how I wish?

   Answer: No. Copyright protection is automatic and does not require that the work be registered with the Copyright Office or carry the copyright symbol. Generally, all work created after January 1, 1978 is protected by copyright at creation, through the author's life and 70 years after the author's death and it isn't until that time that the work enters the "public domain." The copyright symbol - © - and accompanying copyright owner information – *is required* when using copyrighted works. If you copy a portion of an article for your class, you must give author/copyright owner credit on the copy, for example:

   © *Tales of Copyright*, Jane Smith 1993.

Back to FAQ List

2. **Question:** I heard that government documents are part of the public domain. Is that correct?

   Answer: ***Federal Government*** documents are generally considered "public domain," except in the event of contracted works which indicate copyright ownership. Remember, "Public Domain" refers only to copyright status and generally means intellectual property that is not owned by anyone, someone does not have authority over it, it is ineligible for copyright or its copyright protection has expired. Public Domain does not mean that the work is presented *in public* therefore not protected. Examples: Laws, United States Government documents, previously copyrighted works which have expired or were not renewed, works freely distributed with no restrictions on use, and works published prior to 1900. In any event, research should be done on copyright owner, authors and protection. (*17 U.S.C.A. §105*)

Back to FAQ List

3. **Question:** I'm assuming that if a work is out of print/publication, then I am free to make copies of the original. Is this a good assumption?

   Answer: Generally, print and/or publication are not conditions of use of copyrighted materials however they can affect Fair Use evaluation. The author or copyright owner still retains rights to the work regardless of whether it is being published and the Fair Use Checklist should be used to evaluate the work.

Back to FAQ List

4. **Question:** I want to use the Nike® Swoosh symbol as a link to health resources on my portal page. Am I covered by educational fair use?

   Answer: No, Fair Use applies only to Copyrighted materials. There is a difference between Copyright and Trademark but both afford the owners exclusive rights. Use of a trademark, such as one belonging to Nike®, without permission or a release from the owner to do so would improperly infer that Nike® approves, condones, or endorses the resources attached to the link.

5. **Question:** I often use student works in presentations and publications. I'm assuming I can use these freely as I have assigned the work and students have given me permission verbally. Is this adequate? Who owns the copyright?

Answer: As authors, the students own the work and copyright. Even though the work was done at the direction of the instructor and by virtue of the student's attendance at one of our colleges, the *student* created the work and thus is the author. Upon creation, copyright belongs to the author of the work except in situations where work is commissioned as part of employment. *(17 U.S.C.A. § 201)* Use of student work should be done with their **written** permission and should describe how the work is to be used, for how long, and any other terms and conditions. This agreement is a release to use the work, not a transfer of copyright ownership. Authors can transfer copyright ownership but they still retain rights as authors separate from the rights of a copyright owner which can be waived, but only by written agreement (*17 U.S.C.A. § 601)*.

Back to FAQ List

6. **Question:** A student has asked me if they can copy images from the web and use them in a presentation that will not be posted online. Is this considered fair use?

Answer: Fair Use applies to students as well and they should use the Fair Use Checklist to assist in evaluating content they want to use in a class presentation. It should be reiterated to the student that they must adhere to the Student Code of Conduct and Alamo Colleges policies which prohibit violations of copyright.

Back to FAQ List

7. **Question:** What do I do if I can't find a copyright owner to seek permission?

Answer: There are resources to locate copyright owners, such as the Library of Congress and Copyright Clearinghouse (*see Links section*). Generally, it is not advisable to use materials that require permission if you cannot locate the copyright owner. Use the Fair Use Checklist to determine if the criterion favoring fair use far outweighs the inability to locate the copyright holder.

Back to FAQ List

8. **Question:** If I hyperlink to another site on our page, do I have to seek permission?

Answer: Electronic materials such as websites, online documents, photographs and electronic databases are subject to the same copyright protection as traditional print materials. Each linked site should be evaluated for Fair Use and to determine whether permission for use is restricted. An additional consideration is that you do not control the content on the linked site and cannot verify whether or not it has been legally obtained or subject to its own copyright infringement. Links should be considered with an abundance of caution as this area of the law is not well settled.

Back to FAQ List

PRINTED MATERIAL QUESTIONS

1. **Question:** I am a professor of English. Can I distribute a copy of an article I found several years ago to every English 2332 class? I'm protected under educational fair use, right?

Answer: Yes, you may use an article for *your* class but not every class. Generally, use of portions of a lawfully obtained copyrighted work, including multiple copies for face-to-face classroom use, is not an infringement of copyright. However, in this instance how the copy was "found" could be a factor and

any copies distributed should be limited only to your specific classes - only after considering the Fair Use criteria and Checklist.

Back to FAQ List

2. **Question:** The textbooks I ordered for my classes have not arrived. (I want the library to copy the first two to three chapters of the textbook and put them on course reserve for my students – OR - I made copies of the first two to three chapters for my students). As long as I include the copyright information, I'm covered by fair use, true?

   Answer: Fair Use does not apply to materials which the students are required to purchase for the class. However, you could place a copy of the **book** on reserve for the student's use until such time as the books are received.

Back to FAQ List

3. **Question:** I've compiled a stack of articles to use for my class and would like to put together a coursepack to sell to my students– this is "Fair Use" right?

   Answer: Reproducing and selling copyrighted material without the permission of the copyright holder or without compensating them in some way is a violation on copyright law. Additionally, if the materials are required for the course, then Fair Use would not apply. If you would like to use coursepacks for a class, you can obtain clearance from the publisher/copyright owner or work with a copy shop that will secure the appropriate permissions for you.

Back to FAQ List

4. **Question:** The bookstore doesn't have enough copies of the workbook that accompanies their textbook. I want the library to copy the first couple of workbook pages and put it on course reserve for my students. Why does it matter that this is a workbook?

   Answer: Workbooks and similar works that are meant to be written in such as exam books, quizzes, etc. are "consumable works" **excluded** from Fair Use.

Back to FAQ List

5. **Question:** Can I scan articles and short stories for my students and put them on the web for my students?

   Answer: If you are teaching an online class and the articles/stories account for lawfully obtained materials that would otherwise be covered in a face-to-face classroom setting, then the content of the material should be evaluated for Fair Use applicability. If the materials meet Fair Use criteria, it is best to use only ***reasonable and limited*** portions of the work. Use of copyrighted materials in an online environment requires that safeguards are in place to ensure that the material is limited just to the students of the class and protected from redistribution. If the material is part of a textbook, is available for purchase, or required reading for the course, then you cannot copy or post the information for the students.

Back to FAQ List

MOTION PICTURE & SOUND RECORDING QUESETIONS

1. **Question:** I want to show *An Inconvenient Truth* to the students in my art history class, or I am showing *Rear Window* in my film class. Am I covered by educational fair use?

   Answer: A Fair Use evaluation should be done to determine the importance of the film to the course work and whether it is an integral part of instruction – it ***cannot*** be for entertainment purposes. If the content meets the criteria, it is permissible to show the film in a face-to-face class setting so long as the copy of the film being shown was lawfully made. Generally, performance of a work by an instructor in a face-to-face educational setting does not infringe on copyright protection (*17 U.S.C.A. § 110*).

   Back to FAQ List

2. **Question:** I want the media center to convert the old *Destinos* VHS tapes to DVD for archival purposes. The tapes are worn out and I think the DVDs should circulate – OR – We own a copy of the *Destinos* series on VHS but the demand for these tapes is high. I want the media center to make more copies of the original so students can check them out. Since we own the VHS tapes, there shouldn't be any violation of copyright, correct?

   Answer: Although the physical *tape* is owned by the college, the exclusive right to reproduce or make copies of it is reserved for the author/copyright owner. It is permissible for the library to make a preservation copy of a lawfully obtained, institution owned, VHS tape but you may not convert the material into a new media format such as DVD. (*17 U.S.C.A. § 108*)

   Back to FAQ List

3. **Question:** We're hosting a film series for the members of our college and surrounding community. (By the way, we are not charging anything to show the film). I assume that because we have invited students and it's being shown on our campus that we're covered by educational fair use.

   Answer: The audience and purpose of the film performance drastically affects the answer in relation to previous questions. Fair Use does not apply when exhibiting the film to non-students, outside the classroom setting, even without charging a fee. There are motion picture copyright clearing houses which can provide a lawfully obtained copy for display outside the classroom.

   Back to FAQ List

4. **Question:** I want to copy a program from C-Span (HBO or other non-public broadcasting station) to show to one of my classes. Is this educational fair use?

   Answer: Each non-public broadcast should be individually evaluated to determine whether it is permissible to copy and rebroadcast the program. Each program will have its own specific copyright protection and *may* allow for rebroadcast. Fair Use applies to public broadcasting and allows for the recordation and rebroadcast of programs for educational purposes with the following restrictions: (1) the tape can only be used once with each class; (2) the recording must be used within 10 days of recording; and (3) the recording must be erased after 45 days. Failure to comply with the restrictions is infringement of the copyright. (*17 U.S.C.A. §118*)

   Back to FAQ List

5. **Question:** I am going to begin teaching a music class online. I want to show my students the Zeffirelli's version of *Pagliacci*. Will I be restricted in the amount I can show? ***OR*** Can the college upload digital motion pictures to the streaming video site for performance in distance education?

   Answer: Motion picture performance is permissible under Fair Use if the content is determined to be important to the course work, is an integral part of instruction, and is delivered in a **face-to-face** learning environment. However, for online courses the exceptions to copyright protection allow for performance of non-dramatic, literary and musical works, or *reasonable and limited portions* of other works; or display of a work in an amount comparable to what is typically displayed in a live classroom session. *17 U.S.C.A. §110(2)* To show the motion picture, the following conditions must be met:

   a. The copy must be lawfully obtained;
   b. The college must not attempt to bypass any security measure of the copyrighted work *(anti-circumvention)*;
   c. The work must not be retained after the class session;
   d. The college must take steps to prevent unauthorized access and dissemination; and
   e. The work must be an integral part of the course (i.e., not for entertainment)

   The piece at issue should always be evaluated for Fair Use – separate from the reliance on §110(2). If the developed course requires the viewing of the entire motion picture – repeatedly from semester to semester – then the argument favoring fair use is diminished. The proper choice would be to secure license to show the piece if it is intended to be a continued part of the course. It is technically permissible to show streaming motion pictures via digital networks if the proper security is in place, however how the motion picture is digitally uploaded into the server may be the prohibitive factor in the equation as most DVDs now contain security features *(anti-circumvention)*.

   Back to FAQ List

6. **Question:** I have created a mash-up using clips from motion pictures, television, You Tube, and other web content. I want to put several copies of the DVD in the library for students as well as post it to my web page.

   Answer: Moving motion picture or television clips should not be used outside the traditional classroom (i.e., posted to BBV, the internet, etc.). After reviewing other content for Fair Use, a DVD can be placed on reserve in the library – restricted only to students of the class – and should be removed upon completion of the course. If your webpage is open to viewing by the public, you may not publish the content in an open forum.

   Back to FAQ List

7. **Question:** I am using a very small segment of a sound recording to create a new sampling. Because the segment is fewer than 20 seconds, I'm okay, right? (*Bridgeport Music v. Dimension Films* 410 F.3d 792 (6th Cir. 2004)).

   Answer: Generally, whether or not a portion of a sound recording can be used depends on its original form and intended purpose for the new sampling's use. The *Bridgeport* case is complex and its legal interpretation given specific facts should be directed to the Office of Legal Services.

   Back to FAQ List

8. **Question:** Can I post a copy of the digital recording of a guest speaker online for students using [a]BBV, [b]Portal, [c]Web? The speaker gave us permission to *record* the lecture.

   Answer: Once a speaker's lecture is recorded, it is considered "fixed" in tangible form and is subject to copyright protection. Remember that copyright protection is vested in the author not the person who fixed the work. In this instance, the guest speaker would be the copyright owner. Although the speaker gave permission to record the lecture, you must also seek permission to present the work in BBV, Portal or on the Web.

Back to FAQ List

ONLINE / INTERNET QUESTIONS

1. **Question:** What does it mean that to be able to show a film to my online class that it has to be part of the "systematic mediated instructional activity?"

   Answer: "Mediated instructional activity" refers to the display or performance of a work as an integral part of the class experience, under the control or supervision of the instructor, which would otherwise take place in a face-to-face class setting. *17 U.S.C.A. § 110(11)* To show the work, the following conditions must be met:

   a. The copy must be lawfully obtained;
   b. The college must not attempt to bypass any security measure of the copyrighted work *(anti-circumvention)*;
   c. The work must not be retained after the class session;
   d. The college must take steps to prevent unauthorized access and dissemination; and
   e. The work must be an integral part of the course

Back to FAQ List

2. **Question:** Does an author give up his right to copyright and control if a work is posted on the web?

   Answer: No. An author has certain rights *separate* from copyright ownership that can be waived only in writing. (*17 U.S.C. §106*) Additionally, electronic materials such as websites, online documents, photographs and electronic databases are subject to the same copyright protection as traditional print materials. Although the instant availability of information on the internet seems more "public" than traditional printing the material is nevertheless protected.

Back to FAQ List

3. **Question:** I'm teaching an art appreciation class through Blackboard® Vista. My students have to login using a specific username/password so I can post complete copies of materials and media from any resource, right?

   Answer: No. Copyright and Fair Use guidelines still apply regardless of the protections implemented. In fact, further protections must be in place protecting distribution of the work when providing it via electronic means. Provisions and allowances have been made to copyright laws which enable the display certain non-dramatic literary or musical works, or portions of any other works, in a digital format in conjunction with non-profit education. (*17 U.S.C.A. § 110*) However, the performance or display of non-dramatic literary or musical work, or ***reasonable and limited*** portions of any other work, which would typically be displayed in a classroom is only permissible if it is performed or displayed:

   a. only for students of the class;

b. under the direction of the instructor;
c. directly related to the subject matter of the course;
d. are not works that use more than one course session, the students are required to study on their own, or typically purchased for a required course such as textbooks or workbooks.

Back to FAQ List

4. **Question:** Can I use screenshots from software/databases and post them on [a]You Tube®, [b]Portal, [c]Web, [d]BBV for the students in my Geometry class?

Answer: Digital content such as websites, software, online documents, photographs and electronic databases are subject to the same copyright protection as traditional print materials. Fair Use may allow use of the copyrighted material in the classroom; however it ***cannot*** be republished to the public without permission (e.g., YouTube, the internet). There is no specific formula for how much content can but used but there have been guidelines encouraged by the industry which are listed below (adapted from Consortium of College and University Media Centers *Fair Use Guidelines for Educational Multimedia*). The amounts listed below are not legal limitations on use, rather suggestions, and each instance of use should include a Fair Use evaluation.

a. For single motion media (e.g. streaming video) – 10% or 3 minutes, whichever is less
b. For music/lyrics from single musical work - 10 % or 30 seconds, whichever is less
c. For text – 10% or 1,000 words, whichever is less
d. For photos/images - 5 works from one author and 10%, or 15 works, whichever is less, from a collection.
e. For database information - 10%, or 2,500 fields, or cell entries, whichever is less.

Back to FAQ List

5. **Question:** If I use lawfully obtained copies, can I compile media clips for use in my online class?

Answer: Before using media clips or images, Fair Use criteria should be analyzed and consideration should be given to how the clips are put together. Compiling media clips into a presentation or video could be argued to create a "derivative work" which is a right reserved exclusively for the author. Additionally, consideration should be given to the type of media clip being used, the clip sources, and complying with TEACH Act and anti-circumvention standards.

Back to FAQ List

6. **Question:** I've used ELLUMINATE and BBV to teach a PSYC 2371 online class. I won't be teaching this class online until next year. I want to retain all of the articles and media clips that I have posted online until I need them again. Is that a problem?

Answer: One of the evaluative criteria contemplated by Fair Use is repeated or long-term use and that should be a strong consideration in this weighing use of the materials. If the materials used are of such significance that you envision using them for many semesters to come, it is best to obtain permission from the copyright owner.

Back to FAQ List

7. **Question:** A student has asked me if they can copy images from the web and use them in presentations / ppt that they want to post to [a]BBV, [b]Web, [c]Portal. Is this considered fair use?

   Answer: Although Fair Use applies to students as well, republication of copyrighted materials on the internet is prohibited. If a student uses materials in a presentation which are determined to be permissible to use under Fair Use guidelines, that presentation should only be used in a face-to-face classroom presentation or submitted in a secure electronic environment accessible only to the enrolled students and protected from redistribution.

Back to FAQ List

8. **Question:** I know that students have pulled information and images from the web for their presentations. They've also used video clips. They are asking me if they can post these presentations for the students in other classes to You Tube. Is this a problem?

   Answer: Copyright law allows for exceptions, such as Fair Use, for the use of lawfully obtained copyrighted material in a non-profit educational setting. Publishing a presentation on the internet, or any other public forum (such as YouTube) is clearly outside the classroom setting, is not permissible, and violates copyright.

Back to FAQ List

POSSIBLE INFRINGEMENT PENALTIES

What happens if I infringe or are accused of infringing on someone's copyright?

It depends on many factors, but actual and statutory damages can be awarded. Actual damages are those damages suffered by the copyright owner as a result of the infringement. A copyright owner may elect to recover statutory damages which can range from $750 to $30,000 as determined by the court. In the case of *willful* infringement, the court can award statutory damages up to $150,000. If a person honestly believed that the copyrighted material used was permissible under Fair Use, statutory damages *may* be limited. Appropriate use and documentation of a Fair Use evaluation can assist in the defense of infringement allegations. *(17 U.S.C.A. §504)*

Should an infringement claim be made against an employee of the Alamo Colleges, and that employee is found to have committed acts of alleged infringement outside their scope and authority in violation of Alamo College policies, then the District may be precluded from assisting in the defense of the infringement claim and the employee may be *personally* liable for any actual or statutory damages.

Back to FAQ List