

Fair Use and Online Courses

How does fair use apply to online courses?

In 1996, a Congressional subcommittee on intellectual property published a report called the ***Fair Use Guidelines for Educational Multimedia***. Online teaching and learning falls under the broad category of "educational multimedia." While these guidelines are not law, they have become commonly accepted standards followed by educational institutions and the courts. Under these guidelines you may make fair use of copyrighted digital media for specific educational tasks under certain limitations. Because digital media is so much easier to reproduce and distribute than other media, the fair use limitations on digital media are more stringent than fair use guidelines for other media. The *Guidelines* cover educational material that is created by faculty as part of curriculum-based instruction, or by students as part of an assignment, whether face-to-face, self-directed study, or at a distance. The *Guidelines* also provide provisions for inclusion of copyrighted multimedia as part of conference presentations or professional portfolios. Limitations are based on time, portion, copying, and distribution.

According to the *Guidelines*, instructors should limit the use of the educational multimedia projects containing copyrighted material to a period of two years after the first instructional use. However, this may be affected by the limitations on copying.

The *Guidelines* also recommend "that the technology prevents the making of copies of copyrighted material," meaning that every effort should be made to prevent the consumer of the content from making more copies. This is not possible to achieve via the Web. In the absence of technology that limits copying,

The *Guidelines* say that the students should be told not to make copies, and, more importantly, that the material should only be available for 15 days. After that 15-day period, the material could be put on reserve for up to two years. After the two-year period, permission from the copyright holder would be required. The copying and distribution limitations are most restrictive regarding remote instruction (distance learning). Distribution must be limited to students enrolled in the course and there must be "technological limitations on access to the network and educational multimedia project (such as password or PIN)." Portion limitations address the amount of a single copyrighted work that can be included. This varies depending upon media:

Media Allowable Portion for Fair Use

Motion media (e.g., video)	Up to 10% or 3 minutes, whichever is less
Text material	Up to 10% or 1000 words, whichever is less
Music, Lyrics, Music Video	Up to 10%, but no more than 30 seconds
Illustrations, Photographs	No more than 5 images from an artist/photographer, or no more than 10% or 15 works from a published collective work.
Numerical Data Sets (e.g. databases)	Up to 10% or 2500 fields, whichever is less

Fair Use and Blackboard

How do I apply the *Fair Use Guidelines* in Blackboard software?

To comply with the *Fair Use Guidelines for Educational Multimedia* when using Blackboard software, you could:

- a) Make sure the portions of copyrighted material you are using in your course meet the standards of the *Guidelines*.

- b) Put the copyrighted material in a section of your Blackboard course site that is secured (using Course Options in the Control Panel). This should meet the distribution requirement, because only students enrolled in your course will have access to that area.

- c) Since Blackboard course sites are Web-based, it is not possible for the technology to prevent copies from being made. Therefore, copyrighted material could be made available (using the Availability option on your content) for no more than a 15-day period, and your students should be instructed to not make their own copies of the material.

In most cases, this should comply with the Congressional guidelines on fair use. However, you should **always consult with your institution's legal counsel** to make sure you are within fair use parameters and are adhering to your institution's own intellectual property guidelines.