

Media Server and Copyright Policy FAQ

1. The maximum amount of a work that you will digitize depends on its nature and commercial availability. What does this mean?

We will digitize unlimited portions of a work under the following circumstances:

- if the work is a nondramatic literary or musical work, or a still image;
- if the work is primarily factual and not made for entertainment; or
- if it is impossible for students to purchase the work in DVD form at a reasonable price through the Wofford bookstore or a readily available online vendor, such as amazon.com or barnesandnoble.com.

Otherwise we will digitize only an amount that can be viewed during the longest Wofford class period (80 minutes).

2. Is a documentary film primarily factual?

A documentary is a “motion picture that shapes and interprets factual material for purposes of education and entertainment.”¹ It is not primarily factual.

3. What if the work is longer than 80 minutes, but does not fall in any of the “unlimited portions” categories described above. Will it be possible for my students to see the entire work over the network?

In some cases it will be possible. We can digitize the work in portions for broadcast during different time periods. For example, if you would like your students to see a 120-minute feature film, we can digitize it in two 60-minute segments. The students could view the first segment during one day and the second segment during a following day. The only limitation would be that the periods in which the two segments are available for viewing cannot overlap.

4. What is fair use?

Fair useⁱⁱ allows nonprofit educational institutions to use portions of copyrighted works beyond the extent allowed by the TEACH act. The four factorsⁱⁱⁱ that help judge whether a proposed use is “fair use” are the following:

- **The purpose of the proposed use.** In our case, this is almost always teaching, which weighs in favor of fair use;
- **The nature of the copyright work to be used.** If the work is primarily factual, this factor weighs in favor of fair use, but if the work is creative and meant for entertainment, this weighs against it. If the work is a mixture of factual material and entertainment this factor is neutral and does not weigh in either direction.
- **How much of a copyrighted work will be used.** Using a small amount weighs in favor of fair use, but using a large portion or a whole work weighs against it.
- **What effect would the proposed use have on the potential market for the copyrighted work?** If there is no significant effect on the potential market for the work, this weighs for fair use. If, on the other hand, the proposed use replaces the sale of the work, it weighs against it.

We must weigh all four factors in deciding whether it is possible to digitize an unlimited portion of a work. For example, suppose you wish to digitize a full-length feature film, which can be purchased in DVD form, for your class to view over the network. Factor #1 weighs in favor of fair use, but the other three factors weigh against it.

5. Are there any limitations to digitizing and broadcasting material taped off-air?

Digitized material taped off-air generally will be used within 10 days of viewing unless the broadcasting company provides rights for use of off-air taping for a longer period of time. Generally, we will retain the off-air tapes and digital version for only 45 days.

6. In section IV, the policy states that we will not digitize analog media for which digital versions already are available. What is a “digital version” of a work?

A digitized version of a work would be file, such as a Windows Media (.WMV) file, that can be broadcast over a network by a media server. According to this definition, a DVD is not a digital version.

7. What if I do not provide the media to the Director of the Instructional Technology Lab a month in advance?

Although we will make every effort to digitize and broadcast media that is submitted late, we cannot guarantee that this will be possible. You will need to talk with the Director in case of a late submission

8. What if I need a work digitized and broadcast in the summer when the Director of the Instructional Technology Lab is not on campus?

Bring the work to the Help Center. A member of the Help Center staff is the Director’s backup.

9. How does this apply to podcasting?

Podcasting sends actual copies of digital files to students, who can retain these files as long as they want and disseminate them as widely as they please. In general it is a violation of copyright law to podcast material under copyright without permission of the copyright holder.

On the other hand, if you want to podcast a small portion of a work under copyright, the doctrine of Fair Use may allow it. If you have questions about this, please confer with Dave Whisnant.

ⁱ Encyclopedia Britannica. “Documentary Film.” 18 Nov. 2005 <<http://www.britannica.com/eb/article-9030760>>.

ⁱⁱ 17 U.S.C. § 107 of the Copyright Act states, 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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

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- (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.

ⁱⁱⁱ Indiana University-Purdue. Copyright Management Center. "Checklist for Fair Use." 2005. 07 Dec. 2001
<<http://www.copyright.iupui.edu/checklist.htm>>.