

**PATRICK** All right, thank you all for joining this webinar today, entitled "Copyright Made Simple for Digital Educators." I'm Patrick Loftus from 3Play Media, and I'll be moderating today. I'm very excited to be joined today by Dr. Tom Tobin, who is the Coordinator of Learning Technologies in the Center for Teaching and Learning at Northeastern Illinois University in Chicago. He is an internationally recognized speaker and author on topics related to the quality in distance education, especially copyright, evaluation of teaching practice, academic integrity, accessibility, and universal design for learning. His latest work is called *Evaluating Online Teaching-- Implementing Best Practices*. And he is currently writing *Reach Everyone, Teach Everyone-- A Practitioner's Guide to Universal Design For Learning in Higher Education*. And with that, I'll hand it off to Tom, who has a great presentation prepared for you all.

**TOM TOBIN:** Thank you very much, Patrick. I'd like to say thank you to everybody who's here on the live webinars and everybody who's going to be watching in the recording. All right. Fantastic.

Well, thank you, everybody, for coming onto our webinar today on "Copyright Made Simple for Digital Educators." My goal for you, my promise for you today is to turn you folks into copyright ninjas on your campuses. I'm going to give you enough to get started, and then you can move on from there.

So let's do that first poll here. Using that poll feature, please let us know who's participating from your institution today. Are you, A, an administrator, B, in academic advising, C, part of our enrollment management or admissions services, D, student affairs, you're a faculty member is E, or F, other. Fantastic. And it looks like that poll shows me we've got a bunch of faculty members and administrators, but are some other folks as well. And definitely welcome to everybody who's here on the live call.

So I want to start off with a little bit of a story. Imagine, if you will, two years ago there was a famous nature photographer who went on a trip to Indonesia. And he was trying to capture images of crested macaques. That's the monkey you see on your screen right now. So he had a Jeep and a bunch of photographic equipment. And he was deep into the wilderness, going through the jungle. He found a troop of crested macaques, and he followed them at a distance. And then a couple more days later, he was able to get out of the Jeep and track them on foot.

And after a few days, the monkeys-- he was there and he wasn't a threat, so they kind of ignored him. And he was getting closer and closer and closer, until one day he was very close to the monkeys, taking beautiful photographs. And it was the middle of the day. It was getting hot. The sun was beating down. It was time for lunch.

So the photographer took his camera equipment, gathered it together, put a tarp over it, put some rocks down on the tarp, and he walked back to the Jeep, had some lunch. By the time he got back to his photo equipment, though, he was a little horrified, because the troupe of monkeys had gotten curious about what was under that tarp. They had removed the tarp, and they had broken into his backpacks with all of his photographic equipment. There were lenses strewn all over the place. Things were broken. Camera parts were all over the place. And the monkeys were just curious, playing with the equipment.

Now one monkey in particular had picked up one of the photographer's cameras. And as she picked it up, one of her fingers accidentally clicked the shutter. And the camera made a noise, click. And the monkey was curious. Well when I press this, it goes click. And she pressed the button again, click. And then she pressed the button again, click. And she kept pressing the button trying to figure out what was making the noise.

The monkey had taken photographs of the tops of trees, of the dirt in front of her. And at some point during the 875 photographs that the monkey took, the monkey turned the camera around and pressed the button. And so what we ended up with was this photograph, the monkey's selfie.

Now, after the photographer realized what had happened, and he was going through all of the images, he thought, this is a really beautiful image. I'm going to post this on my blog. Isn't this fantastic?

So he posted it. People congratulated him on being able to capture the intelligence and the curiosity in the monkey's eyes. And somebody posted that same picture, made a copy of it and posted it on the Wikipedia entry for crested macaque. Of course the photographer said no, that's my photograph. Take that down. And he sent, through his lawyers, a request over to Wikipedia.

Now, the wags at Wikipedia did not take the photograph down. They consulted with their lawyers, and they wrote back and said we won't remove this photograph because you didn't take it. The monkey took it. And since monkeys, as far as we know, don't have legal

representation, legal agency these days in the courts, then nobody owns this photograph. So if there's nobody to own it, nobody can claim copyright on it.

Well, who do you think won that particular battle? It was Wikipedia. And that actually went through the courts about two years ago. So who owns the monkey selfie? Nobody. The monkey selfie ends up in what we call the public domain where no one owns it and no one can claim copyright for it.

So what does this have to do with copyright at your campus or your institution? Well, I have to apologize to you, it has nothing to do with copyright at your institution. In fact, this is how most presentations about copyright start out. And I wanted to move down this road just to show you that it's not a good place to go. Most copyright presentations focus on the specifics. Folks will take one, and they'll blow it up and talk about how that one particular case has implications that are very specific to a particular way of interpreting copyright.

I actually want to do exactly the opposite with you today. I want to promise you four things. I want to give you a four-item rubric so that you can figure out whether you're making a good use of copies in your online courses and your digital materials. I want to give you some ideas about how you can determine whether it even applies to what you want to do. If it does, I want to show you a way around copyright. And I also want to help you create a robust defense, so that if you're using content in your courses that are created by other people, you can feel comfortable without having to ask your lawyer.

So here we go. Let's take a little quiz. We're going to do these questions one at a time. And you'll probably notice, I like Star Wars. So quiz one is *A New Hope*. Think about this, and then we'll open up a poll so that you can register your answer to the quiz.

So first, which of the following choices is an example of copying? Is it, A, linking to a file on YouTube, B, sharing the web address of a file on YouTube, C, saving that YouTube video onto your own computer, or D, providing the keywords for finding a video on YouTube? Patrick, would you pull up that question, poll number two please? Looks like as the poll is closing here, we've got 92% voting for C, and a smattering for A and B and D. Hang onto your answers.

Let's take a look at another question to start us off and baseline us. This is the point where we hear "Luke, trust your feelings." So which of the following are not protected by copyright? So is it A, works that are created by the federal government, B, works that display that copyright symbol, the C with a circle around it, C, works that are published on the internet-- I can hear

one of my students going, yeah, it was on the internet so obviously it's meant to be free-- and D, student-written papers in your class. And as we close, we're at about 2/3 A and 1/3 D on this one.

One more question real quick here. Which of these works is protected by copyright? Is it A, your spouse's unpublished personal journal, B, a 1929 movie whose copyright hasn't been renewed, C, the latest US Congressional Budget Office report-- by the way, that's about 13,000 pages right now-- or D, software code where the creator gives up all of the rights to the work on purpose? All right, it looks like we're just about wrapping up there. And this is about 2/3 saying your spouse's unpublished personal journal.

Let's take a look at the answers to these questions. And this will provide you with a foundation for what you're going to learn in the next couple of minutes. So which one of the following was copying? If you said saving that video from YouTube down to your own computer, that's important when we talk about copyright, because it's a legal right not to have other people make copies of your content. And so saving that video onto your own computer, you're making another copy in a fixed format. So good for you if you selected that one. Don't worry if you didn't.

Number two, which one isn't protected by copyright-- works that are created by the US government. And we'll talk about in a second some of the other ways that things can enter what we call the public domain, meaning copyright doesn't apply. And you can make copies of them no matter for what reason or how much.

Which one is protected by copyright? This one, some folks said it was the student papers. Actually, those are protected by copyright. As soon as you put something into a fixed format, like a written essay for a class, you, the creator-- in that case the student-- own the copyright to it, but your spouse's unpublished personal journal as well. So every time you put something into a fixed format, you've got copyright to it. So good going. And even if you've got a couple of these incorrect, I promise you by the end of our time together, you'll be an expert.

Let me ask what is a copy first of all, though. On your screen you see three images of a bee on a flower. I, a couple of years ago, took this picture at the Garfield Park [INAUDIBLE] here in Chicago, Illinois. And my question to all of you is, which one is the original? And it's a silly question. None of these is the original. The original was actually a set of ones and zeros that got encoded onto a digital memory card in my camera at the time. All of these are copies. And

this has to do with a fundamental shift between when our copyright law, most of it, was last updated and today. It is vanishingly easy now to create an exact ones and zeros copy of something, and in a way that it wasn't easy even 10 or 15 years ago.

So what's not copyrighted? Well, we talked about things created by the federal government, that US Congressional Budget Office report. This is the reason why Ken Burns, when he makes his documentaries, he can bring up old photographs from the Civil War because they were created by Matthew Brady and his staff as part of the War Office under President Abraham Lincoln. This is why no one has to ask permission to have video footage of the Space Shuttle taking off, for example. Works that are created by the federal government, those things are in the public domain.

Also, if it's been 70 years after the creator or the owner's life, and copyright has not been renewed, that goes into the public domain. So in terms of that 70 years, it used to be 20. And then it was extended to 50. And then in about 2007, the Sonny Bono Copyright Extension Act was signed into law. And the primary mover on that one was the Walt Disney Company. They realized that Mickey Mouse was about to go out of copyright, and every illegal copy venture that was creating T-shirts and bootleg CDs and DVDs with Mickey on it, they wouldn't be able to go after them under the law. And so it was extended again.

Also somethings in the public domain if the owner purposely gives up all the rights to that content. So Linus Torvald, the software developer, he created an operating system called Linux. And he said, I give up all my rights. You can make copies of this however you want. Please modify it, improve it. And it's turned into a really big content thing for software developers. So you've got developers all across the world utilizing Linux, for free, with permission from Linux, because all those rights have been given up.

Also, what is copyrighted? If you look closely in here, this is about as close as I can get to showing you a certain cartoon mouse. But this is a photograph of the surface of the moon taken by NASA. And as you know now, works created by the federal government, well, copyright doesn't apply. So I can make the copy and share it with you today.

As you saw in the poll question about your spouse's personal journal and student papers for your class, anything that's created and put into a fixed format, well, that has copyright to it, and you own it, including materials you create for class as a faculty member and [INAUDIBLE] as well. You do not need to register something with the Copyright Office-- you can. You pay your

\$130 something-- or display that copyright symbol in order for copyright to apply.

Here's where we get into a little bit of technicality, but I'm going to simplify it real fast for you. In one of the law textbooks that I like to use when I'm thinking about copyright, here is a quotation. "The 1976 revision of the Copyright Act changed the nature and function of fair use. It treats fair use as a defense rather than as an affirmative right of use."

And here I want to tell you a story about priests and professors. Let's go back to 1789. Thomas Jefferson and James Madison, two of our founding fathers, are writing the laws of the United States. And they are the ones who put together the first draft of the first copyright law of the US. And they said, if you create something in a fixed format-- what they meant back then was books-- if you create something in a fixed format, then you own the right to that particular expression of those ideas. You can't copyright an idea, but you can copyright the expression of it, the book, in our cases the video, the CD, the song. And once you have that fixed format together, if someone wants to make a copy of it, they need your permission, except for priests and professors. They had a right called fair use.

Now back in 1789, if I was a priest and I was preaching a lesson from the pulpit, and I wanted to reprint an article from Ben Franklin's *Pennsylvania Gazette*, I could go to my local printer and say, give me 100 copies of this article, and I could put a copy at each seat in my church and I wouldn't have to ask Ben Franklin anything. I wouldn't have to ask for his permission or even tell him that I was making those copies.

Now fast-forward as well for professors at Harvard University, which back then was one building in a pasture. And it was mainly preparing people to be priests and clergymen. If I was a professor at the university and I wanted to give my students copies of a book, I could have my printer make more copies of that book and I wouldn't have to ask the author for permission or get any other kind of permission.

So fast-forward now to 1888. The priests drop out. The law is changed so that only professors have the right of fair use. But then fast-forward to 1976, and suddenly fair use is no longer just a yes or no. Fair use is no longer just, hey, you can use this. You can make copies of it. It turns into a legal defense. And this is why every lawyer and legal counsel for your institution that you talk to when you ask them about copyright, they say, it depends.

Let's get beyond it depends. So in the House of Representatives' report from 1976, there is this disheartening sentence. "Although the courts have ruled on the fair use doctrine over and

over, no real definition of the concept has ever emerged. Since the doctrine is an equitable rule of reason, no definition is possible, and each case has to be decided on its own facts." Now these are the people who wrote the law, and they don't have a real definition for what fair use is anymore.

That actually works in our favor. And I see a couple of comments here in the questions. It depends sounds like a tax rule. Yeah, kind of. And isn't your use of the Star Wars images in your presentation protected? Isn't that fair use? Somebody's paying attention. We're going to talk about that in a second.

Here is something that you can take back and use at your institution tomorrow. When you make a copy of something, there are four criteria in the copyright law that allow you to make a good fair use defense. And this is how you think about it. Instead of being yes and no questions, think of these like sliders. At one end of the slider, you can make a strong case. At another end of the slider you're making a poor case. And in the middle is a neutral case. And you can end up anywhere along that continuum.

Who determines where you end up? Well, it's a judge if you get sued. But if you know what these criteria are, you can make copies, like I'm doing with my Star Wars images, under fair use and be reasonably certain that you have a good, strong defense for making those copies.

Let's get into these fair use secrets. The first one is purpose. So are you using the content for - and the law says, criticism, comment, teaching, scholarship, research. Parody is another one that's in there. But for us in academics, it's teaching, scholarship, and research. So are you making the copy for that express purpose? You can make a strong case, a poor case, a neutral case on that. It goes back and forth on the slider.

Now you'll notice, if you go back and read Section 118 of the copyright law that I have shifted these around so that they are in a different order, and so that the acronym of their first initials spells out PANE, P-A-N-E, like a pane of glass, like a clear pane of glass, like I am clear about fair use and copyright.

So if the first criterion is purpose-- oh, wait, for-profit institution alert. If you're working at a for-profit institution, your purpose is almost always commercial. So be careful if you are working at a for-profit college or university. Even if you're creating materials for teaching, the fact that your institution is for-profit means that you are at best making a neutral case under purpose.

The next one is amount. So it was purpose, then amount. How much of the item are you using? Many of us have heard about the 10% rule. Forget the 10% rule. It's not actually in the law. It was an appellate court decision in the 1980s in Texas, and it was a commercial suit that was being brought. And the judge in the case said, well, I can't find anywhere in the law that talks about how much is too much, so let's just say 10%. And using, let's just say 10%, has gotten into people's minds.

What the law actually says is that you're using a representative sample of the work in question. And what that means is you can make a strong case that you're using as much as you need and not more. You can make a weak case that you're copying the whole thing. Or you can make a neutral case somewhere in there. You have to decide on your own though how much is enough for what you want to use.

So that was purpose, amount, nature of the work. This is the one that a lot of us haven't heard of before. Is the content more factual or more creative? You can copy more of something that is more factual, like a government report or a statistical abstract or a research study. But if it's more creative, you should use less.

Now I know that doesn't help in terms of, well, how much is enough, but it does help you with the slider. Are you making a strong case, a poor case, a neutral case? Does that mean we can never copy pieces of images, videos, or music? No, but you should be more sensitive to using smaller amounts of those things.

The other criterion under nature of the work is, are you making the copy just for one time? Hey, I found this cool thing and I'm going to give it to my students in just that time? Or are you going to use it repeatedly. I found this cool thing and I want to make it part of my course every single semester, and give that copy for them.

So that was purpose, amount, nature of the work, and economic impact. This is the one that judges look at first, typically. Will your use of the material deprive the creator or author of revenue or profit? So if I'm a chemistry professor and I'm using a particular software package in my class, and it costs \$300 a copy, and I tell my students, you know what, just give me \$3 to cover the cost of the CD and my time and I'll burn you a CD copy of the software and give it to you, that's economic impact. You're making a copy and you're taking money out of somebody's pocket.

So that's purpose, amount, nature of the work, and economic impact. If you use these back-of-



the-envelope criteria, you'll be on the right side of the law when you make copies 90% of the time.

I should also mention that I'm not a lawyer and none of what I'm saying here is intended to be legal advice. At the same time, I've talked with a lot of copyright lawyers about this content, and they've given it their general blessing. I don't want to turn you into lawyers. I want to turn you into folks who have a good heuristic, back-of-the-envelope way to make sure that you're on the good side of the law.

So let's take a couple more questions here. One of those PANE elements is nature of the work. So which of these would be the best example of appropriate use-- copy an economic report in your prof-pack every semester, PDF that economic report to give it to your class once, C is PDF a poem and distribute that to your class every semester, or D, PDF that poem so students don't have to buy the book in which it appears? Yeah, looks like about 90% are saying B on this one.

Let's try another question. Which part of the PANE acronym deals with whether you deprive the owner of revenue or profits? Is that amount, assigned value, ethical value, or economic impact? Looks like 93% say economic impact.

That was a two-question quiz. Let's take a look at the answers. Which one was the best example of nature of the work? Well, PDF that economic report, because it's an economic report. It's more factual than creative, so you could use more of it, and give it to your class one time. And so that has to do with the nature of the work being more factual than creative, and you're only using it for a one time purpose. So you're making that copy under those criteria.

And you all got this one right. Which part of purpose, amount, nature of the work, and economic impact deals with depriving the owner of profits? That's economic impact. [INAUDIBLE].

Kicking right along here, so let's take a look at one thing that we always want to share when we're talking about copyright, and that's accessibility. [INAUDIBLE] copies for learners with documented disabilities or other accessibility needs. In other words, they have accommodations through your student disability services office or other kind of place.

There is really one way to do that copying. You can copy just about anything and modify it for accessibility. So if you have a student with a hearing impairment in your class and there are

videos that somebody else created out there on YouTube, you can save that YouTube video onto your own computer. You can add captions. You can create a transcript for it. You can modify it, do what you need to do so that that student has access to the information in the video.

Here's where it gets a little different. You have to limit the access to those modified works. So if you're making a copy only to serve someone who needs an accommodation, only that student should have access to the modified work. So even if you do all the work of creating transcripts or captions for a video that you took from someone else's YouTube channel, you can't then give that modified video to the whole class. It has to be just for the student who needs the accommodation. So you should not share those converted materials.

Now if you do want to provide broader access for the copies that you make or for modifications that you make, you should still use those PANE-- Purpose, Amount, Nature of the work, and Economic impact criteria. And then you can make your fair use case from that. But it's not an automatic thing that when you are doing accessibility copying and modification, that you can then share those out with the rest of the class. So I wanted to make sure that we talk about the scope here.

And there's even a comment in the questions. "This is a very limited scope, because more and more we're finding the content that is made accessible also benefits students without disabilities." That's true, [INAUDIBLE] actually helping me to move into the next part of our conversation. So fantastic.

And somebody else asked, "What's the instructor's responsibility for what students do with shared materials?" Our responsibility ends when we provide it to the students. We can tell them don't share. And if they share it, that's on them and not on us.

All right, so if you're making copies, you know PANE. You know that they're sliders, that you can make a strong case, a poor case, a neutral case, anywhere in between.

But let me tell you that the law is the last thing that applies. What you see on your screen is the second takeaway. Licenses and permission trump the law. And I know that I'm saying that sentence near to an election here in the United States. I'm using trump as a verb.

So licenses and permission trump the law. So if you have a license to make a copy and use it in a way that copyright law wouldn't allow you, that license obtains. That license applies. If you

have permission from the person who owns the copyright to make that copy and use it in a way that is broader than copyright law would allow you to do, that permission applies, not the law. The law is what applies only when nothing else does.

Let me share with you one way that you can get a license to make a copy, and that is the Creative Commons licensing scheme. It used to be that the only people who had licenses for their copyrighted content were big corporations, because you needed a lawyer to write a 14-page agreement of the license. Every time all of us on this webinar have installed software, there is a 14-page agreement called an end user license agreement. And we all click I Agree. We probably don't read it very carefully, because it's all legalese. There could be a clause in there that says, "By installing this software, you agree that after you pass away, we get both of your kidneys," and you would still say I Agree and let me use this particular piece of software.

So Larry Lessig and his colleagues at Harvard University and the Electronic Freedom Foundation a few years ago created the Creative Commons license scheme, in which they created the 14-page version of each of these licenses, but they have an easy-to-read front end. So when you see someone sharing something under Creative Commons, people can give up some of their rights under copyright, but keep the rest of them.

So attribution-- go ahead make a copy of this, but just make sure you give me credit for it. And if you've been paying attention to the little notes at the bottom of all of my images, I'm doing attribution for [INAUDIBLE].

Noncommercial-- go ahead and make a copy of this content, but only use it for noncommercial purposes. Those of us who are working at for-profit institutions, that means that a lot of the things that are shared under that noncommercial license are out of bounds for us when we're making copies.

No derivative works-- don't turn my black and white photograph into color. Don't crop it. Don't turn it into a different thing. Don't slow down my audio so that it sounds like (SLOWLY) I'm talking like this, very slowly.

So share alike-- if you do make a copy, don't share it under terms that are more restrictive than the ones that I shared with you. And you too can create and then share your materials using one, some, or all of these Creative Commons scheme elements.

How do you find things that are shared under Creative Commons? Go to your favorite search

engine like Google, YouTube, Vimeo, Flickr, anywhere that you go to find media, and go to the advanced search portion of your search engine. There will be a dropdown menu or a selection where you can look for all Creative Commons licensed content. So you can find stuff that people [INAUDIBLE] with you without having to ask them further permission, because they've already given you one of these licenses.

And that noncommercial, we talked about the for-profit institution alert. Make sure that you're looking for stuff that doesn't have the noncommercial restriction on it. And then you can use it at your for profit institution.

Also, when in doubt, get permission. And when you make permission request, you can use those PANE criteria, P-A-N-E, to ask how the work will be used. And you should always provide attribution. Attribution should occur at the place where other people can see or experience the copy.

So for example, here is a sample permission letter from Columbia University. And I'm giving the attribution down there in tiny type, but it says "Image Copyright 2010, Copyright Advisory Office of Columbia University, Ken Crews, director. Used under Creative Commons by license from [copyright.columbia.edu](http://copyright.columbia.edu)."

Now that attribution at the bottom of the screen, I'm doing that because that's what the license tells me I have to do in order to stay within the copyright that's being expressed by the people who own this letter. And by the way, since they share it, you can go there and grab this and modify it to your own needs as well.

When you do attribution, though, that is usually an ethical thing and not a legal thing. So if you're making copies under fair use, you have satisfied the requirements if you made a strong case. But I'm a good scholar, so I'm going to do attribution every time I do it.

All right, there's two more quizzes, and there's only a few questions left. What is a work in the public domain? Is that, A, it was never covered by copyright, B, it's more than 70 years after the author's life and the copyright hasn't been renewed, C, the original owner has passed away, or D, it was created in a country with no copyright law. And there's only one of those, and it's Iran. And a few folks say it was never covered by copyright, and about four out of five of you say 70 plus years. Let's take a look.

And one more quiz question. What is Creative Commons? Is this a clearinghouse for copyright

of music? Is it a set of US laws for use of copyrighted content? C, informal guidelines for using copyrighted works, or D, a set of license agreements for common sense use of copyright works? And as we take a look at this poll, it looks like about 80% of everybody on the line is voting. And it looks like it's running about 4 to 1 in favor of D over C. So we've got that one closed down.

Let's take a look at the answers on this one. So what's a work in the public domain? If you were paying attention real early in our presentation, you remember, it's more than 70 years after the author's life and the copyright hasn't been renewed. So anything from Ernest Hemingway, for example. It's been more than 70 years since he's passed away. His daughter Mariel Hemingway did renew the copyright. You can do that for one generation. But that copyright hasn't been renewed recently, and so our friend Ernest Hemingway is about to go into the public domain, meaning you can make copies of his content and use them without having to ask permission from anybody.

And what's Creative Commons? Some of you voted that it was a set of informal guidelines. But remember the sentence, licenses and permission trump the law. And you'll be on it because that's a set of the license agreements that allow us to utilize copies for purposes outside of what copyright law would allow us. Good job, everybody, for these.

And one more quiz, and it's only got one question. Where does the principle of fair use best apply in these elements? A, you copy an excerpt of a product review from a magazine as part of your brochure for your startup company. B, you copy a song for course presentation background music. Copy a paragraph from a book on the Civil War for your history course handout. Or D, link to a YouTube video to support your online lecture.

And a couple of questions coming in under the questions of copyrights renewed. Is it in place for an additional 70 years? That's actually up to the courts to decide how long that next copyright renewal goes. But the original is 70 years after the author passes away or the creator passes away.

And it looks like our poll is closed. Ooh, and we're about evenly split between C and D, copy that paragraph from a book or link to a YouTube video. And the answer here is copy the paragraph from the book on the Civil War for a history course handout.

Here's a question though. Why isn't it D, linking to a YouTube video to support your online lecture? Well, if you were paying attention to the very first question we ever asked, which was

what is a copy, here is the place where you have to forget everything you just learned. We talked about fair use on copying. We talked about licenses and permission trump the law. But now here's the question you have to ask before you ask any other question. Did you make a copy?

And in these days of easily making quick copies just by doing Control-C, if you didn't make a copy, then copyright does not apply. By the way, this is an image of a librarian whose facial hair most closely resembles mine. So I'm doing a little bit of a joke on myself here.

But hyperlinking and streaming are not copying. So if you just give somebody the web address of something that is publicly accessible, did you make a copy and put it in a fixed format? No, you're just pointing people to where it is. The same thing with embedding video in your learning management system or your web page. You are making a copy of the player, but you already have a license to do that from, say, YouTube. And so that embed link, you're actually creating only a copy of the player. You've got a license for it. And the video itself is still sitting on a server in Washington, DC, or New York or Atlanta or Toronto or San Francisco, and only comes down to your students' computers on demand. And those temporary copies-- recent law like the TEACH Act and the Digital Millennium Copyright Act, they have already cleared up that loophole to say that temporary copies aren't considered copies.

Another good question here. Check with your librarians to see if your institution already has licensed copies of the materials you want to work with. So remember, licenses and permission trump the law as well. So if you do need to make a copy of something, check with your librarians to see if you've already paid the money as an institution to get those copies.

So it's time to talk about your takeaways. It's time to have some question and answer here. And my colleague Patrick has been watching those questions. And if you have a few of them to highlight, I'd be glad to answer them.

**PATRICK**

**LOFTUS:**

All right, great. Thanks, Tom. That was an excellent presentation. And we are going to get started with Q&A in a moment. So Tom, if you're ready, the first question is, can you talk about the TEACH Act?

**TOM TOBIN:**

The TEACH Act and the Digital Millennium Copyright Act are laws that were passed in the late 1990s and early 2000s to try to close loopholes in the 1976 Copyright Act. And they usually have to do with digital media, because during 1976, we had 8-track tapes and movies on 35-millimeter film and things like that. But we didn't really have the internet revolution yet.

And so the TEACH Act and the DMCA, I can point you to the University of Texas at Austin. Their libraries have a really fantastic quick guide to the TEACH Act. And in the resources, the handouts and things for our session today, you'll find a link to their overview of DMCA and the TEACH Act.

At a real top level though, DMCA and TEACH Act were designed to close loopholes in the copyright law so that you could make copies under fair use without running into some of the broadcasting restrictions that the FCC has put in place. And this is actually one of the reasons why you can show a whole film in your physical classroom by pressing play on your player and showing it on a television screen. But you can't copy that whole film and put it into your online course environment and let your online students see it, because that's considered broadcast. That's one of the loopholes that is still open in that. So I'd encourage you to take a look at that University of Texas at Austin library presentation. It'll take you about 10 more minutes if you want to do a deeper dive into DMCA and the TEACH Act.

**PATRICK LOFTUS:** Great. Thanks, Tom. Next question here. Can licenses restrict our fair use rights? Library databases often have very tough restrictions.

**TOM TOBIN:** Well, licenses cannot restrict your fair use rights. But remember, licenses and permission trump the law. So if a license says you may only make a copy of this and share it with people on Wednesdays in months that have an R in them when there's a full moon, you have to abide by that. Now you might not make the copy if the restrictions were that crazy. But licenses are agreements between two people so that they don't have to rely on the broader law. So licenses are almost always more restrictive than the fair use rights that you have.

Now, if you wanted to, say, download a copy of something from your library databases and keep that copy on your hard drive, you actually do have a good fair use case for doing that, because it's for the purpose of research or scholarship. It's when you start making that copy available to others and sharing it that you have to really take a look at what your licenses tell you. And the right people on your campus who can tell you what those licenses allow you to do are your librarians. So good question to ask on that one.

**PATRICK LOFTUS:** Great, thank you. A lot of questions here about files and videos or videos you don't own. So can you elaborate on how to actually make files or videos you don't own accessible?

**TOM TOBIN:** And in terms of accessibility, let's take the easiest case and move into a more difficult one. The

easiest case is you find a video on, say, YouTube that you'd like to share with your students. And the YouTube video is using the automatic captioning, which turns the captions into basically junk. And you want to make that video file more accessible for everybody in your course. You're not working with an accommodation for someone with a specific disability or other accommodation need.

So you want to make that broadly accessible to everybody. The easiest way to do that is to create a transcript for the video and share that transcript on the same page where you embed the YouTube video. So long as the video isn't saying you must do this at this exact point in the process, the text-based transcript is just enough information to allow somebody to get the information from the video. And it also provides your learners with enough choice that maybe they look at the text, and maybe they view the video, or maybe they do both and it's up to them.

Let's get a little harder here. Maybe that video that someone else created is a process, and you need to know when to put the chemicals together, when to stop the reaction, when to pour off the excess, when to clear the hood from the vapors and fumes. In that case, you can create a caption file, or you can ask somebody like, oh, 3Play Media to help you with caption files for it. And then you can create a copy of it that has captions either burned into it or has a separate caption file. And you should always ask permission from the person who owns the video and say, hey, I'd like to do a caption file for this. Would you be willing to put that up with your file?

And most of the time when people say, hey, someone's offering to do free work that will give greater access to my content, they usually say yes. Or you can ask the person who owns the file to create a caption file for you. And getting that permission-- remember, licenses and permission trump the law.

So the challenge there is you don't want to make a copy of it, put it in a fixed format, and host it on your learning management system or in your drive or storage area and then modify it, because then you have a really poor case under your purpose, amount, nature of the work, and economic impact.

**PATRICK  
LOFTUS:**

Great. Thank you, Tom. Next question here. What if your institution has a new rule regarding material created at the college that states it's theirs, but I created all the online courses?



**TOM TOBIN:** Ah, that's the other part of this conversation that we can't fit into an hour. And that's who owns what? And I'll give you a little teaser for this. If you work for a company, everything you create for that company on company time and using company resources belongs to the company. They own it. They have the copyright to your work. That's called work for hire.

In higher education, however, there is a longstanding tradition of allowing faculty members to own the copyright for the content and materials that they create. It is a tradition. It is not part of the law. And that's why many colleges and universities have policies and have contractual agreements that enshrine that into the policy and contract for the institution, where they say who owns what.

Now if you're creating content on your own time with your own equipment, you definitely own that. But this is a point where we're going beyond we don't have to ask the lawyer. I would encourage you to contact your legal counsel at your institution and get more clarity about the who owns what. And that's another half an hour conversation that maybe we'll have as part of this series down the road.

**PATRICK LOFTUS:** Great. Thanks, Tom. Next question here. I notice you are using different types of attributions for the images used in your slides. Do you recommend a guide for attribution, or are there specific rules to be aware of?

**TOM TOBIN:** In terms of attribution, as a good scholar, I'm going to put an attribution for just about everything I make a copy of. And that's more an ethical thing than a legal thing. Under fair use you don't have to put an attribution for things that you make copies of. But we're trying to show our students the right way to cite their sources, so it's incumbent on us to do good attributions.

I don't have a particular style for attributions. Nine times out of 10 I'm just going to give a copyright citation that says copyright, the year, the person who owns it. And if I'm using that content, making that copy under a license, I'll tell what the terms of the license are.

So for example with those Star Wars images, those are from [starwarsscreencaps.com](http://starwarsscreencaps.com), and I'm using tiny little bits of the entire thing. So I'm making a fair use argument for making those copies at all. So if you want, you can use MLA, APA, Chicago style, and you giving a citation in that format shows your students the right way to do it and covers your butt too, just ethically speaking.

**PATRICK** Great. Thanks, Tom. I think we have time for about two more questions. And there have been

**LOFTUS:** a couple of questions about court rulings for accessibility. Is there case law that grants fair use for accessibility? There have been some OCR findings that do dictate that the ADA trumps copyright law.

**TOM TOBIN:** This is actually an area of contention that the Americans with Disabilities Act allows us to make copies and put things in fixed format for accessibility reasons. And as we're thinking about accessibility, there are actually sections of copyright law that do deal with making things accessible. The Americans with Disabilities Act and Section 508 of the Rehabilitation Act also have law that, if you read both of them side by side, they kind of contradict and counterindicate each other. So that's an area where I'd be happy to point you toward your legal counsel at your institution for a better and deeper dive.

There are resources in that resource list that we share with all of you folks.

And as a way to end up here, let me slide back here, and just say that I do a lot of consulting and speaking on all kinds of issues around copyright, academic integrity, accessibility, evaluating online teaching. There's my website. And I definitely do want to say thank you. It's [thomasjtobin.org](http://thomasjtobin.org).

And I also want to put up the one-page copyright flowchart that is free to you as an attendee here today. And this is everything we just talked about in one page. So you can run through that decision making process as well.

And I also want to say thank you very much to my hosts here at 3Play, and especially to Patrick for being my behind the scenes guy. So much appreciated, and thank you everybody for your time today.

**PATRICK** All right, great. Thanks, Tom. That's all the time we have for today. I just want to remind everyone to keep an eye out for an email tomorrow with a link to view the recording and slide deck. Thanks again to Tom Tobin for a great presentation. And thank you to everyone for attending. Have a great rest of your day.

**LOFTUS:**