

Video for Learning and Issues of Intellectual Property

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Introduction

In today's media landscape, the near ubiquity of video has opened up new avenues for learning. Recent advancements in the field of educational video show promise for a boundless abundance of teaching tools and resources. Among a range of options, the educational platform [Khan Academy](#) promotes a vision of free access to a quality education for everyone, while [TEDEducation](#) launched an initiative in March 2012 to create videos with teachers and animators for students in classrooms across the globe.¹ Despite the extensive reach of video, however, educators face several challenges that may discourage them from the use of video in their lessons. According to a report by Intelligent Television, New York University, and Copyright Clearance Center, statistics show:

Obstacles to video use that faculty identified include... not having the option to stream and upload (13%); not having enough foreign format PAL players (10%); not having conversion equipment (10%); poor library catalogs (7%); and inadequate information about library acquisitions (10%) (Kaufman, 2009, 9).

In addition to technical obstacles, there are legal barriers such as licensing issues and cumbersome clearance processes. This essay will examine the influence of intellectual property law and legal precedents in restricting the distribution, sharing, and remixing of video, focusing on the business model and economy that gives rise to the use of copyright and considering a balance between protection and allowance of video content. Additionally, it will explore the educational implications of statutes and doctrines such as the Fair Use clause in U.S. Copyright Law and the Safe Harbor provision of the Digital Millennium Copyright Act. Finally, it will highlight some of the resolutions that have emerged and discuss how these resolutions and further steps can play a role in the circulation of knowledge and scholarly materials.

¹ Salman Khan initially created videos for his family in another state and soon found that his videos reached a broader viewership, leading to Khan Academy.

Affordances of Video for Learning

In the digital age, video presents numerous affordances and possibilities that were not previously available. Today, video digitization and format conversion technologies now offer the potential to preserve historical footage, early celluloid film, and other artifacts. This demonstrates the medium's potential for preserving and circulating products from the past in the modern age. Besides transcending temporal limitations, video also has the ability to distribute broadly across populations and facilitate distance education. Moreover, as the line between media production and consumption blurs, video allows for a growing participatory nature and democratic process (Jenkins et al., 2006). Initiatives including [Adobe Youth Voices](#) and [World Youth News](#) offer students from around the world the opportunity to share their experiences by recording and editing their own videos. Additionally, as students become producers of media, they can gain a better understanding of deeper concepts through the process of explaining or constructing representations of ideas (Peppler and Kafair, 2007, 15). Video platforms such as [ShowMe](#) and [MathTrainTV](#) offer individuals the chance to create their own video lessons and share them with an online community.² Additionally, some educators implement the “[flipped classroom model](#)” by assigning teacher-produced video lectures to watch at home for a more active learning environment in class, “flipping” the sequence of lecture and homework. Ultimately, video offers many features for learning and can serve as an effective pedagogical tool.

Noncontroversial Uses of Video

Although there are legal restrictions placed on educators' use of video, certain instances qualify as noncontroversial video uses. In addition to the earlier mentioned educational video resources, a host of websites including [Youtube EDU](#) and [Open Yale Courses](#) provide videos of university lectures, which professors have signed releases to and agreed to share online. These resources contribute to the distribution of [Open Educational Resources](#) or the free sharing of teaching and learning materials across the Internet. Among online courses at Stanford University, professor Sebastian Thrun taught an [online Artificial Intelligence class](#) that was offered worldwide, and he is now working on the startup [Udacity](#), which offers access to video lectures and classes online. This advancement, however, does not circumvent the issue that educators cannot freely use others' copyrighted material without the appropriate licenses. Even with these options available, it does not run the

² The resources ShowMe encouraged its users to participate in the “[Why Open Education Matters](#)” video competition by Creative Commons, Open Society Institute, and the U.S. Department of Education, while MathTrainTV involves kids teaching other kids math concepts.

gamut of video uses for educators who still face challenges in freely incorporating video in their lessons and teaching curriculum.

Controversial Uses of Video

There are undeniably legal barriers to educators' free and wide use of video. While the aforementioned options allow educators to employ videos for open use, this does not address the need to use full-length feature films or other copyright video that would serve a pedagogical function. By intending to show a movie in class without clearance, many educators run the danger of transgressing the boundaries of copyright law and are thereby committing a crime. In addition, films taken out from DVD or video rental stores are licensed only for private home viewing. If the video were shown at a public venue, then this would constitute a concept called "public performance" (17 U.S.C. § 101).³ Public performance requires a license, which educators need to purchase in addition to reporting the date, time, and audience size of a movie showing. Alternatively, educators can purchase films with educational licenses already in place from supply companies. Violations of copyright law can lead to a hefty fine of \$150,000 per penalty ("About Copyright Law," 2011). Considering these factors, educators are faced with relatively cumbersome clearance processes, and it would be easier just to forgo the use of video. Nevertheless, some educators risk crossing legal boundaries in the interests of students' educational experiences. Additionally, students may face issues of intellectual property when they remix copyrighted work to create video projects.⁴ This use of video can ultimately lead to weighty consequences.

Some educators may justify their usage under the clause of Fair Use or Fair Dealing on the grounds that their use of a specific video serves and

³ As defined in 17 U.S.C. § 101, a showing would constitute as a public performance if held at a "place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered."

⁴ In a research study by Pepler and Kafai (2007), case studies of adolescents' creative media production exemplified how adolescents engaged with popular culture and the ways that certain media texts resonate with their life experiences, inducing them to reflect on the messages in the media through remixing media content. Moreover, this presents a type of video creation they can participate in, as some adolescents do not have direct access to video cameras and editing software (Pepler and Kafai, 2007, 13). Pepler and Kafai (2007) argued, "creative production enables critical reflection on media culture, expressed through visual instead of oral or written discourse" (16).

educational purpose (17 U.S.C. § 107).⁵ Fair Use also protects the production of video mash-ups, or the remixing of video content, on the basis that the purpose or character of the work is “transformative,” which involves the creation of new meaning as interpreted in the court case *Campbell v. Acuff-Rose Music* (1994).⁶ However, as some video remixes are simply experimental forays in media production and do not necessarily reflect new insights or meaning, they may not fall within the scope of Fair Use and thus would not find protection. Moreover, there are restrictions on the Fair Use doctrine. In U.S. copyright law, the Fair Use clause in 17 U.S.C. §107 outlines the factor of “the amount and substantiality of the portion used in relation to the copyrighted work as a whole.” Because educators cannot show the entirety or a substantial portion of a film, this poses legal impediments to educators’ adoption of video in the classroom.

Legislation, Legal Precedents, and an Incentive Economy

At the same time, the necessary alternative may not be to offer for free full-length motion pictures or copyright video. The industry runs on an economic model in which copyright creates an incentive for continued media production. As copyright holders, media producers can generate revenue, recoup initial investments, and collect additional earnings in box office gross, residuals, and other commercial outlets. The argument is that this model provides a financial motivation for investors to fund projects and further industry developments (“Copyright Information,” 2011).

Rooted in this economic model are cases in which companies argue for the protection of media content and curtailment of content piracy and illegal distribution of video. They may turn to the court of law to regulate the usage of video, filing lawsuits against anyone in potential or direct violation of copyright law. In *Viacom v. Youtube* (2007), Viacom filed a lawsuit against Youtube for video content in violation of copyright. Based on the court interpretation of the Safe Harbor provision of the Digital Millennium Copyright Act of 1998 (DMCA), it was decided that the responsibility for copyright violations does not rest on Internet Service Providers or content hosts (Title 17, Section 512). Nonetheless, hosts need

⁵ Furthermore, a group of filmmakers have written a handbook entitled [Documentary Filmmakers’ Statement of Best Practices in Fair Use](#), explaining the circumstances of fair uses practices in which fellow filmmakers can use copyrighted material without clearance.

⁶ *Campbell v. Acuff-Rose Music* (1994) involved a case in which a rap music group appropriated the lyrics of a rock ballad, which was owned by a corporation. The court decided that the Fair Use clause of the Copyright Act of 1976 protected the group’s use of the lyrics on the grounds that it served a “transformative use,” or created new and original meaning, as opposed to a “derivative use,” or unoriginal appropriation of content.

to take down any content in violation of copyright. This decision served as a legal precedent for later court cases. Additionally, the DMCA granted certain exemptions for educators, enabling educators to rip or decrypt video content from DVDs to create film clip compilations for school use. However, some individuals may not know how to carry out these processes. In addition, there are Digital Rights Management (DRM) systems to combat piracy. The DRM systems were primarily created to curb the spread of early release of video in particular regions, restricting the circulation of video across the globe.⁷

Resolutions and Next Steps

While there are legal barriers to video usage in classrooms, resolutions have surfaced in the midst of these contested waters. The video community and platform [Vimeo and Creative Commons](#) formed a partnership, enabling Vimeo users to license their work, browse, and search for other content under Creative Commons (fig. 1). Creative Commons in turn receives metrics on how their licenses are used. Users can reuse and remix video content, creating their own artistic creations. Blake Whitman, the Vice President of Creative Development at Vimeo, asserted:

We know the many ways in which sharing can positively impact creativity. As such, we will continue to build features that enable people to exchange ideas, and that support the Vimeo community's growing demand for creative sharing. Our partnership with Creative Commons is the backbone of this commitment (Park, 2012).

A community of sharing and creating can grow in which there would be no loss to the original creators, for they would also be able to use other footage, remix material, build their reputations, and draw a following. Using the Creative Commons attribution license, individuals can also receive credit from those who use their content. Additionally, [Youtube](#) also allows users to license their work under a Creative Commons Attribution license, while the [Internet Archive](#) includes archival footage under Creative Commons.

Still, some people may not be fully aware of video copyright issues and may thus inadvertently break the law. Hence, it is important to increase awareness of the legal implications of handling video. While the legitimate interests of copyright holders of current industrial films and videos should be respected, there is also the potential to share video through other avenues. An alternative to obtaining an individual license

⁷ The [Digital Rights Management](#) system places a lock on and limits users' abilities to play or obtain access to media on certain hardware.

for each film is to pay a fee for an umbrella license, which grants clearance to use a range of films without needing to report the time, date, and audience size. In addition, it is critical to increase the visibility of available video options. Perhaps a database of licensed videos on the web can be created. The [Digital Library Federation](#), [Open Video Project](#), and the [video archive hosted at USC](#) provides a collection of selected works for educators and schools to use for pedagogical purposes. Moreover, videos can be further curated to allow for easy accessibility and searchability based on metadata and keywords. With resolutions in place, educators can share content with less concern over legal violations.

Conclusion

While there is a proliferation of videos in the media landscape, there are also legal obstacles that limit educators' ability to use video freely for purposes of teaching and learning. It is vital to raise awareness of video copyright issues and to take steps toward achieving equilibrium between the protection of copyright and the open circulation of video content. While the economic interests of copyright holders should be considered, this should be balanced with the open sharing of video resources. Video affords the capacity to illustrate concepts in a dynamic visual and auditory form. Consequentially, video has the potential to reach audiences on a larger scale. This raises implications for the distribution and circulation of knowledge. Further, video sharing and streaming platforms create strong prospects for distance learning, an international distribution of knowledge, and a cross-cultural exchange of ideas. In light of this, lifting restrictions on video allows for a wider circulation and communication of ideas. Overall, as learning resources move from analog to digital or integrate a mix of both, video can play a pivotal role in disseminating information and broadening access to knowledge.

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