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Guidance for the use of audio-visual works in online teaching – general audience

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# 1.0: Executive Summary

Below is a summary of key points that are found within this document.

* Before making use of the UK Copyright exceptions, investigate if your institution/establishment has access to subscription-based services like, Box of Broadcasts ([BoB](https://learningonscreen.ac.uk/ondemand)) and [Kanopy](https://www.kanopy.com/), to determine if the Film/broadcast you are looking for is found in either of these platforms.
* If you make use of a subscription service like BoB, remember and check the terms and conditions, as there can be caveats like; materials only being available to enrolled staff/students who are physically based in the UK
* Determine if your establishment has an [ERA licence](https://era.org.uk/the-licence/), however there is no national licence which covers the digitisation of DVDs.
* If required, the UK Copyright exception [Illustration for Instruction](https://www.legislation.gov.uk/ukpga/1988/48/section/32) should cover showing the entirety or excerpts of films/broadcasts to enrolled students via a secure online platform (e.g. Moodle), for non-commercial educational purposes. **N.B., the UK copyright exception** [**section 30 (quotation, (1Za)**](https://www.legislation.gov.uk/ukpga/1988/48/section/30) **could potentially be used if your intended usage “falls” outside of illustration for Instruction.**
* When making use of the UK Copyright Exceptions, always refer to [Fair Dealing](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing) to help ensure the use is indeed “fair” and doesn’t impact the rights holder
* If your institutions licences, services and collections don’t have the content you’re looking to use, then academics could make the choice to show excerpts or entire content from a DVD which they lawfully own to enrolled students for non-commercial teaching purposes. **This content should be made available through password protected online environments like Moodle, Zoom, Teams.**
* When linking to external media sources (including YouTube), ensure they are legitimate sources and also own the copyright, as ‘sign posting’ students to illegitimate sources could be interpreted as ‘[communication to the public’](https://www.legislation.gov.uk/ukpga/1988/48/section/20).
* When providing attribution for using a film (in alignment with Illustration for Instruction), include, the title of the film, the directors, and producers.

# 2.0: Introduction

The purpose of this document is to provide non-legal guidance on the various Copyright related issues you may encounter when looking to use audio visual material, such as films and television programmes in your teaching, particularly in an online environment. These uses may range from showing enrolled students an excerpt (clip) from a feature film or programme for teaching purposes or linking to a YouTube video.

This document does not provide guidance/tutorials on the technical aspects involved in the use of video, for example embedding a video clip in Moodle course or ‘burning’ a DVD. If you require help in relation to these types of activities, you will need to contact the appropriate professional services staff or department- in your establishment. Furthermore, there is no national licence for the digitisation of DVDs, so any ‘burning’ of a DVD will have to be a risk-based decision you choose to make.

**Before continuing onto the remainder of the document, please examine the key points below regarding its content:**

* The law surrounding the UK Copyright exceptions is open to interpretation, there is no binary ‘yes’ or ‘no’ answer as to how the exceptions can be applied.
* The text contained within this document should not been interpreted as instruction or dictation, but as guidance which you can choose to consider when you’re planning to utilise the UK Copyright exceptions for the purpose associated with this document.

*N.B. thank you to* [*Dr Emily Hudson*](https://www.kcl.ac.uk/people/emily-hudson) *(Kings College London), who’s document (cited below), provided helpful and insightful guidance in relation to interpreting and understanding the UK copyright exceptions considering the pandemic and beyond.*

Hudson, Emily, Updated Copyright Guidance for Using Films, Audiovisual Works and Images in Online Teaching: Beyond the Covid Pandemic (February 24, 2022). Available at SSRN: https://ssrn.com/abstract=4042770 or http://dx.doi.org/10.2139/ssrn.4042770

# 3.0: Making use of your establishments ERA licence, subscription-based services, and collections

**Below are possible options you could choose to make use of, before considering to use of the UK copyright exceptions.**

## 3.1: ERA license

Your educational establishment may have an [ERA](https://era.org.uk/the-licence/the-era-license/) (Educational Recording Agency) licence, which enables the recording of broadcast TV and radio for non-commercial, educational purposes on premises. This allows staff and students at licensed institutions to make recordings or copies of TV and radio output of ERA Broadcaster members without having to seek permission from the rightsholder. The licence arose out the UK copyright exception ([section 35](https://www.legislation.gov.uk/ukpga/1988/48/section/35)), from the [Copyright Design and Patent Act (CDPA) 1988](https://www.legislation.gov.uk/ukpga/1988/48/contents).

To find out more about the ERA licence & if your institution has the licence click on the link below.

[Link to Information about ERA licence](https://era.org.uk/the-licence/the-era-licence/)

## 3.2 Educational Streaming Services

Another option you may have access to is, a subscription-based service like [Box of Broadcasts](https://learningonscreen.ac.uk/bob/) (BoB), [Click View](https://www.clickview.co.uk/), [Kanopy](https://www.kanopy.com/en), etc. These services can be purchased by an educational establishment to enable staff/students at subscribing institutions to record and copy content made available by their partner broadcasters, i.e., UK Freeview channels. The content available via each platform may vary, along with the functionality. You should also consider how content is made available, and if there are any restrictions in place. For example, currently BoB content can only be viewed by enrolled staff/students who are physically based in the UK, as it works in tandem with the ERA licence. Therefore, to address both the functionality, and how content is made available, you should examine the terms and conditions of the platform you have access to at your establishment.

## 3.3: Request a streaming copy

It may be prudent to investigate if a streaming licence can be purchased for the content you would like to make use of. You should also check if there are conditions around the usage, i.e., it must be for educational purposes, and can they only purchase streaming licences when available? Usually, this kind of service can be found via your library or IT services, or they may be able to guide you to relevant person or department.

## 3.4: Establishment’s Collection(s)

Your institution may have foreign language films or documentaries within its library collection; therefore it may be worthwhile contacting this department to determine what is available.

# 4.0: UK Copyright Exceptions

In this section we’ll examine how the UK copyright exceptions can enable copyright protected works to be shown to an enrolled student audience in either face – to face or online environments, without having to contact the right holder for permission. However, before using a UK copyright exception, you should determine if the work (film) you’re looking to use is available via an institutional licence (ERA) or service (Box of Broadcasts)? You could also explore if there’s a copyright free alternative, if none of these options provide a solution you could make the risk-based choice to use a UK copyright exception.

**Below we examine possible scenarios of how the UK copyright exceptions could be used, along with best practice.**

## 4.1: Showing a film to students in a face – to face class

The performance of literary, dramatic, and musical works can be delivered to an in-person audience consisting of teachers and students at an educational establishment under [section 34](https://www.legislation.gov.uk/ukpga/1988/48/section/34) (Performing, playing or showing work in course of activities of educational establishment). Sound recording, film (and broadcast), can be shown to an audience at an educational establishment for the purposes of instruction.

**N.B., persons, such as parents, friends of pupils or members of the public are classed as external to an institution. Therefore, an educational establishment intended to include parents, friends of pupils or members of the public in the audience, when showing copyright protected work, it would have to obtain written permission from the rights holder to do so.**

**Any works shown to a face – to face audience, e.g., a film, must be a lawful/legal copy.**

## 4.2: Showing entire films (and excerpts), and or TV/Radio broadcasts to an online class of enrolled students

As discussed in the previous section, the UK copyright exception (section 34), can be used to show an entire film to enrolled students in a face – to - face classroom setting, as it’s viewed as a performance to the public. However, using a film online may implicate other rights, given this uncertainty it would be advisable using [section 32](https://www.legislation.gov.uk/ukpga/1988/48/section/32) (Illustration for Instruction), and consider [section 30](https://www.legislation.gov.uk/ukpga/1988/48/section/30) (Quotation) (1ZA), if your intended use ‘falls’ outside section 32. For example, it may be more challenging to argue that support activities associated (e.g., social events) with a university are aligned to the educational use that is part of the Illustration for Instruction exception.

When using either of these copyright exceptions, it is important to ensure the use is aligned to the factors listed below:

**Section 32 Illustration for Instruction**

* The use must be non-commercial; and
* By an individual giving or receiving instruction (educational use); and
* Accompanied by sufficient attribution to the creator of the work (unless it is impossible for reasons of impracticality)

**Section 30 (Quotation) (1ZA).**

* The work must be available to the public (excluding unpublished work); and
* Do not use (quote) more than is required to fulfil your purpose; and
* Is subject to [Fair dealing](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing); and
* Sufficient attribution to the creator is provided (unless it is impossible for reasons of impracticality)

**For both exceptions, implement technical measures to ensure the content cannot be downloaded or copied & make works (films). This should be possible through a Virtual Learning Environment (VLE), like Moodle**

**Refer to section 4.4 (page 8), for additional measures that will aid in making the use of an entire film potentially be considered “fairer”.**

## 4.3: Fair dealing

Before making use of section 32 or 30, it is important to understand the legal framework which is associated with these and several other copyright exceptions. [Fair dealing](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing) is a legal framework designed to allow the lawful use of work without having to seek permission from a copyright owner. The concepts of ‘fair’ and ‘unfair’ are not legally defined, however thanks to case law (a legal test), there are several lawfully identified measures such as:

* only use the amount of work required to fulfil your purpose, without impacting the rights holder ability to make money from their work; and
* provide attribution to the creator (unless it is impossible to do so for reasons of impractically.

## 4.4: Are there any measures I can take, to ensure the use is considered ‘fairer’ when making films available online?

When showing entire films to your students online, the practical measures listed below, will potentially aid in increasing the chances of your use being considered fair:

* Only show the amount required to fulfil your purpose, e.g., don’t show an entire 60-minute interview, if all you need is a 10-minute excerpt to illustrate your teaching point.
* The film (or clip) must be shown for educational purposes.
* Only enrolled students can access the film through a password protected, secure online environment like Moodle.
* When used, ensure the films are appropriately attributed
* The films are only made available when required, e.g., students can only access the film for a specific week and no longer, they can always be made available again. Resources can be hidden and shown again in platforms like Moodle, so this is another method of controlling the availability of films within this platform.
* Content should have measures in place to make sure it cannot be downloaded or recorded.
* Only lawful copies of content (films) can be made available to students

## 4.5: Advising students when making use of copyright protected works

It is always recommended to advise students on the context when making use of copyright protected works. This will not only establish how its being used but allow you the opportunity to establish how the content should be viewed and used. Below are some key points that you can advise students on:

* The content is being shown for purely educational purposes.
* The content (Films) cannot be copied or shared in any capacity, as it may constitute copyright infringement.
* The length of time the content will be available for
* The possible consequence of infringing copyright

In relation to any copyright protected content that is used, it would be good practice to monitor usage through platform of delivery, e.g., Moodle, BoB etc.., wherever possible. This will help reassure copyright owners, that any questionable use will identifiable, and an appropriate response implemented.

## 4.6: What’s the best practice for providing attribution (citation) for a film?

[Section 178](https://www.legislation.gov.uk/ukpga/1988/48/section/178) of the CDPA stipulates the Film title, producers and directors should get credit when an attribution is produced. Although the title, producers etc... may be present in the film’s credits, it’s good practice to include a sperate note when the film is being shown, as this will help ensure compliance with Illustration for Instruction & Quotation.

# 5.0: Could I copy films from my Netflix or Amazon account, and show these to enrolled students online?

Despite any intended educational use, it would be ill advised to source media (films and other broadcasts) from staff’s personal Netflix or Amazon accounts. This use would not be considered “fair” (there’s case law to reflect this), as it would involve using someone else’s password and username to access the database. Copying films from either of these platforms would be received poorly by the courts.   
  
**N.B., more information about Netflix’s one-time educational screenings of specific documentaries can be viewed in this** [**webpage**](https://help.netflix.com/en/node/57695)**.**

# 6.0: Linking to external content and YouTube videos

It may be problematic to link to online content that is not authorised, e.g., the person or body who uploaded it aren’t the rightsholder or don’t have permission from the copyright holder to do so. If copyright infringing content is linked to, it can be interpreted as ‘[communication to the public](https://www.legislation.gov.uk/ukpga/1988/48/section/20)’, even if your intent was to ‘direct’ students to resources. Best practice would be to, always double check the content you are linking to.

## 6.1: YouTube

Similar to the above section, you must apply scrutiny when linking to or embedding content found in YouTube. This is due to users being able to upload content freely onto the platform, which in turn results in videos being uploaded without the copyright owner’s permission. You run the risk of copyright infringement if you were to share, link or embed an offending YouTube video. The methods listed below, will help mitigate the potential Copyright risks associated with using YouTube videos:

* Within YouTube, you can [filter a search](https://smartcopying.edu.au/how-to-find-creative-commons-material-using-youtube/) to produce only results that have a Creative Commons licence associated with them.
* If you choose to link, embed, or share a YouTube video, then ensure it’s from an official channel, e.g., BBC, CNN etc.
* Bodies such as [TED Talk](https://www.youtube.com/results?search_query=ted+talks), allow their content to be made available under a CC licence (please examine [Terms and Conditions](https://www.ted.com/about/our-organization/our-policies-terms/ted-talks-usage-policy)), which is suitable for an non-commercial, educational setting

# 7.0: Students trying to Access Content Overseas

By using the Illustration for Instruction Copyright exception, it should be permissible to stream audio/visual content to students overseas, providing the country in question has a similar framework to Fair Dealing. European countries and the US have ‘Fair Use’ which is a similar legal framework, and therefore should permit the streaming of content to students in those countries. It is always advisable to investigate the legal framework and law of the country you intend to stream content to, as some countries have strict laws around censorship, which may result in the students not being able to view the content.

## 7.2: YouTube

If you are intending to use YouTube in your online teaching, then it’s worth noting YouTube is banned in China and other countries. According to YouTube’s [Terms of Service](https://www.youtube.com/static?gl=GB&template=terms), videos can only be shared by using their embedded player. This results in users not being able to download the video, and then convert to a different format for upload to a VLE or other online environment, unless written permission was obtained from the copyright owner. It’s at this point, it would be advisable to consider the following factors, if you choose to make the YouTube content available to students in a country where the platform is banned:

* Is the YouTube video essential to your teaching; and
* If so, carry out a risk assessed approach that refers to Fair Dealing conditions; to
* Determine if the use of the video would be fair?

# 8.0: Use of DVD’s

## 8.1: Can I use my personal copy of a DVD for teaching online?

**N.B., before making use of your own DVD, remember and make use of any subscription-based services like BoB or your institutions collection(s).**

It should be permissible for staff to use excerpts or the entire content from their own lawful copy of a film for non-commercial teaching purposes (**to enrolled students via a secure, password protected environment**). If you choose to use your own DVD, then please read the section below regarding Technical Protection Measures (and copyright exceptions), as these should be considered before accessing or copying your chosen film.

Written permission from the rights holders may be required to make use of the DVD(s). Obtaining permission can be a protracted process, ranging in length from several days to months. You should also check if the DVD in question is protected by security measures, as any copying would be deemed illegal (check “Technical Protection Measures section on this page for further information).

**Refer to the Fair Dealing & ‘advising students’ good practice on pages 8 & 9 of this document, if you choose to make use of your own DVD.**

8.2: Technical Protection Measures (TPM)

Some media, such as DVD’s and e-books, are often protected by TPMs, also known as copy protection measures or DRM. These are in place to prevent unauthorised access or copying.

TPMs enable copyright owners a different method of offering content to consumers whilst preventing piracy. EU and UK Law protect the rights of copyright owners to employ such methods as TPMs to protect their work, any circumvention of such technology is illegal.