**Can instructors use movies stored in the Cloud for face-to-face teaching purposes?**

**Short Answer:** In most circumstances, NO.

**Scenario:** An instructor purchases a digital movie from Amazon (or some other online site) and stores it in the Cloud. The Terms of Use allow the instructor to download the movie onto a laptop for personal viewing. The instructor now wants to bring the laptop containing the movie into the face-to-face and show the movie to the entire class. The Terms of Use state that the digital copy of the movie is only for “personal” use of the purchaser.

**Question:** Can the instructor show the movie to the class in this scenario?

**Long Answer:** No. The Terms of Use do not authorize such an activity. Only movies that have an educational or public performance rights attached to them may be shown from the Cloud.

Section 110(1) of the Copyright Act allows instructors to show movies in the face-to-face physical classroom if certain criteria are met: (1) only equipment in the classroom is used, (2) a lawful copy of the movie was obtained, (3) it occurs at a non-profit educational institution, and (4) no transmissions of the movie originate from outside of the physical classroom (e.g., not from the Cloud or through a streaming service). This language allows an instructor to use a DVD movie and show it in the face-to-face classroom using only the equipment in that room. Here is the relevant language:

***17 U.S. Code § 110 - Limitations on exclusive rights: Exemption of certain performances and displays***

*Notwithstanding the provisions of section 106, the following are not infringements of copyright:*

***(1)*** *performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;*

If we look at the present case, the instructor purchased a digital copy of a movie from Amazon and stored it in the iCloud. The instructor can download the digital movie on to their own personal electronic device which is permitted by the Amazon Video Terms of Use. The instructor then brings their personal electronic device with the movie on it into the classroom to play the movie. They would be in compliance with copyright law by taking advantage of Section 110(1).

This scenario is very similar to the hard copy DVD situation being played in face-to-face classrooms. However, the difference is that the Amazon Video Terms of Use apply to the purchase of digital copy of the movie stored in the iCloud. When a DVD hard copy movie is purchased, there are no Terms of Use that the buyer agrees to at the point of sale. Therefore, only copyright law applies to the face-to-face teaching scenarios where DVD movies are used in the classroom for nonprofit educational purposes.

The Amazon Video Terms of Use is a contract governed by contract law principles. A buyer typically clicks on an “I Agree” or similar language on the website when purchasing the digital movie. Clicking on the button indicates the purchaser’s acceptance of the Amazon Terms of Use. By doing so, the instructor basically gives up their rights under copyright law and agrees to be bound by the Amazon Terms of Use. While the instructor may be in compliance with copyright law in this scenario, they would be breaching the Amazon Terms of Use when showing the movie to the entire class. Breaching the language that states the digital copy is for “personal” use only.

***Amazon Video Terms of Use*** [***https://www.amazon.com/gp/aw/help/id=201422760***](https://www.amazon.com/gp/aw/help/id%3D201422760)

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Showing a movie in the classroom is considered a public performance. While the instructor can make a fair use argument under copyright law to use the digital movie in the classroom, that argument has no impact on the Amazon Terms of Use which are governed by contract law, not copyright law.

Minnesota State *System Procedures 1C.0.1 Employee Code of Conduct* and *5.14.5 Purchasing* require Minnesota State employees to comply with the law and conduct themselves in an ethical manner. Minnesota State employees must abide by the Terms of Use they agree to.

Please refer questions to Gary Hunter, System Director for Policy, Procedure, and Intellectual Property at gary.hunter@minnstate.edu.

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