**Can instructors use their personal streaming service account (Netflix, Hulu, Prime Video) to stream movies into the classroom?**

In most cases, NO. The streaming services’ Terms of Use typically prohibit such activity for most movies. Only movies that have educational or public performances rights attached to them may be shown through a streaming service.

Streaming movies for educational purposes is a confusing issue because both copyright law and contract law come into play. Even though it may be permissible under copyright law, the streaming service’s Terms of Use do not permit the activity.

Copyright law only requires the movie to be “lawfully” acquired in order to use it in face-to-face teaching. If an instructor purchases a streaming service subscription, such as Netflix, then the “lawfully acquired” criterion has been met under copyright law. Unfortunately, when signing up for a streaming service account, the instructor is essentially waiving their rights under copyright law, and agreeing to be bound by the streaming services’ Terms of Use. *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.

The Terms of Use are really a contract and the promises made in them must be kept. Most Terms of Use include language that allows the personal, non-commercial use of the streaming service and its contents. This language permits a person to use the service to stream the movies to themselves, their friends and family members. Unfortunately, the Terms of Use prohibit the public performance of movies obtained through the streaming service. For example, here are the Netflix Terms of Use presented on their website as of October 26, 2020.

4.2. The Netflix service and any content viewed through our service are for your personal and non-commercial use only and may not be shared with individuals beyond your household. During your Netflix membership, we grant you a limited, non-exclusive, non-transferable right to access the Netflix service and view Netflix content through the service… You agree not to use the service for public performances.

 4.6. You agree to use the Netflix service, including all features and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, or other restrictions on use of the service or content therein. Except as explicitly authorized in these Terms of Use, you agree not to archive, download, reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale, or use content and information contained on or obtained from or through the Netflix service. You also agree not to circumvent, remove, alter, deactivate, degrade or thwart any of the content protections in the Netflix service; … We may terminate or restrict your use of our service if you violate these Terms of Use or are engaged in illegal or fraudulent use of the service.

The highlighted text prohibits a person from using the service for public performances, which requires an instructor to understand the definition of “perform” and “public performance”, as related to the classroom. The best way to define these words is by looking at their definitions in the Copyright Act. The term “Perform” is defined in two ways: (1.) live performances, such as acting out a theatrical play, playing live music on stage, or singing a song while performing at a concert, and (2.) playing a pre-recorded version of a live performance, such as a CD of music, a DVD movie, or a digital file containing music or movies using other technologies.

As related to a streaming service, *perform* means to play a pre-recorded copyrighted work (streaming a digital file), such as streaming a pre-recorded TV show, movie, or other content available through the service It also means the playing of a TV show, movie, or other content a person recorded through the streaming service to watch at a later date. So when a movie is streamed through a streaming service, the user is actually *performing* the movie under copyright law.

The copyright act also identifies two scenarios as to what constitutes a “public” performance. The first one evaluates the location and the second one evaluates the audience, irrespective of the location.

1. *A public performance is any performance in an area open to the public. If the location is a public area it automatically classifies any performance being conducted there as a public performance. Whether or not a fee is charged to view a performance or how many people attend is irrelevant when the event takes place in a public forum.*
2. *A public performance is also defined as a performance in any place where a substantial number of people outside the normal circle of family members and social acquaintances are gathered. The event is usually not open to the public, even though it could occur in a public area that has be reserved, such as a classroom for enrolled students in a course. In these situations, the composition of the audience is evaluated.*

The classroom likely falls into both scenarios. Since anyone can enroll in a course at our public institutions, a course could be considered *open to the public.* Even if certain prerequisite courses are considered along with the physical limitations that some classrooms present on student caps, a reasonable argument could be made that the classroom is a public location at the colleges and universities across Minnesota State. If for some reason the classroom is not considered a public area, then we would look at the audience which is comprised of students and an instructor. It is highly unlikely that all the students and the instructor in any given course would all be family members and/or friends. Therefore, the classroom is considered a public location for the purpose of understanding the Terms of Use entered into for the streaming service.

The “personal use” rights granted through the streaming service’s Terms of Use allow a person to stream movies into a setting for themselves, their family, and their friends to view, or onto a personal electronic device that limits the viewing of the movie, such as laptop, smart phone, iPad, etc. The Terms of Use authorize access to a movie and not the retransmission of it. The language in the Terms of Use should be carefully reviewed to determine if the account holder has “personal use rights” or something else.

Some streaming services such as Netflix offer several films with educational performance rights attached to them. An example is the film [13th](https://www.netflix.com/title/80091741?source=35) which is about the criminalization of African Americans and the U.S. prison boom. Instructors may stream movies with educational performance rights into the classroom through a streaming service since the activity does not violate the Terms of Use. If the language in the Terms of Use is unclear, ask the System Director for Intellectual Property for assistance.

Keep in mind that when you stream movies, the streaming service provider can identify the instructor by their personal account information and their employer by the IP address. While there is no history of streaming service providers suing people for violating their Terms of Use, should they or the copyright owners choose to do so, they will have the information needed to identify the instructor and their employer.

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

System Director for Policy, Procedure, and Intellectual Property

Academic and Student Affairs

Minnesota State System Office

gary.hunter@minnstate.edu

651-201-1659