This guide…
…helps you determine whether uploading content to bCourses is permissible under fair use and other standards.

If you can answer “yes” to any question…
…you can post the content directly, rather than linking to it.

Remember, linking is always fine…
…as long as it was lawfully uploaded content. So if you link, you don’t need to undertake the decisions below.

1. Has permission already been provided?

Sometimes, authors or copyright grant permission for instructors to post or circulate copyrighted materials. Maybe this was via e-mail to you, or through application of a Creative Commons license.

2. Is the work in the public domain?

Public domain refers to works for which copyright protections have expired, or that were ineligible for copyright protection (e.g. facts, ideas). Public domain works can be posted without permission or paying royalties. The general rule of thumb is: Creative expressions published pre-1923 or created by Federal government are in public domain.

3. Would it be “fair use”?

It is not copyright infringement to make uses for purposes such as teaching, criticism, comment, scholarship, or research, provided that on balance, your use is fair based on four factors. We dig into these four factors on the next page. In the meantime, UCOP offers these guidelines as being in the spirit of fair use:

If you want to post digital copies of articles, book chapters, or other works to bCourses, there should be:

• A clear connection between the work being copied and the instructor’s pedagogical purpose
• An amount copied tailored to include only what is appropriate for the instructor’s specific educational goals
• Access to works distributed online provided only for the duration of the course for which they are provided, and limited to students enrolled in a course and other appropriate individuals (e.g. teaching assistants for the course)
• Each copy includes full attribution in a form satisfactory to scholars in that field

4. Is it subject to a TEACH Act exception?

Like fair use, the TEACH Act offers an exception to copyright’s exclusive rights, but often Fair Use is broader. The TEACH Act allows you to post: Performances of non-dramatic literary or musical works (e.g. poetry reading), performances of limited & reasonable portions of other works (e.g. film clip), or any work in amount you would have used during class (e.g. portion of movie that would have been shown in class). Students can retain materials only for “class session,” and material must be integral.
Is it fair use?

When considering the four fair use factors, keep in mind that the fair use exception is *purposefully broad and flexible to promote academic freedom, expression, education, and debate.*

<table>
<thead>
<tr>
<th>Fair Use Factor</th>
<th>Tip for Applying the Factor</th>
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<tr>
<td>The purpose and character of the use, including whether the intended use is</td>
<td>Uses in nonprofit educational institutions are more likely to be fair use than works used</td>
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<td>commercial vs. for nonprofit educational purposes.</td>
<td>for commercial purposes.</td>
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<td>The nature of the copyrighted work.</td>
<td>Distributing factual works is more likely to be fair use than doing so with creative,</td>
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<td>artistic works such as musical compositions.</td>
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<tr>
<td>The amount and significance of the portion used in relation to the entire work.</td>
<td>Copying smaller portions of a work is more likely to be fair use than larger portions.</td>
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<tr>
<td>The effect of the use upon the potential market for or value of the original.</td>
<td>Uses that have no or little market impact on the copyrighted work are more likely to be fair.</td>
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**Remember UCOP’s Tips**

If you want to post the material to bCourses rather than linking to it, then there should be:

1. A clear connection between the work being copied and your pedagogical purpose
2. An amount copied tailored to include only what is appropriate for your specific educational goals
3. Access to works distributed online provided only for the duration of the course for which they are provided, and limited to students enrolled in a course and other appropriate individuals (e.g. teaching assistants for the course)
4. Each copy includes full attribution in a form satisfactory to scholars in that field

Questions?
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