

# Copyright for Films/Broadcasts

Films and broadcasts are a valuable resource for students and teaching and are available from a variety of sources in various formats. Certain uses are permitted in law or by licence for study/teaching/educational purposes.

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## Legal Exceptions for Copying, Showing or Lending Film/Broadcasts

Current copyright legislation is contained in the [Copyright Designs and Patents Act 1988](#) (CDPA 1988) and the exceptions that are particularly relevant in the use of film/ broadcasts in Libraries and for education are explained below. These exceptions are more commonly referred to as **Fair Dealing** which are 'defences' in law, NOT absolute rights.

### What is 'Fair Dealing'?

Fair Dealing is not defined in law but left open to the discretion of the courts in a possible copyright infringement claim. The courts will decide on a matter of fact, degree and impression in each case i.e. what you are doing, how much are you copying and what impact your copying has on the work and its market value.

The key question asked is: how would a fair-minded and honest person have dealt with the work?

Before copying under the 'fair dealing' exceptions, you should always consider:

- Would your use substitute for possible sales and cause the rights owner loss of revenue?
- Is the amount you are using reasonable, appropriate and absolutely necessary for your purpose? Copying a whole work is rarely permitted.
- Does the copying meet the provisos of the exception/s you are relying on?

*The educational provisions are limited to instruction or examination and assessment purposes only. Any further use of third party content, particularly if regarded as commercial e.g. sales, publishing, exhibitions, festivals, conferences or personal portfolios, will require copyright permission from the rights owner.*

*Always cite your sources unless you have a genuinely valid reason not to, i.e. impractical or impossible.*

## General exceptions

### **S.29 For non-commercial research and private study**

Making an individual copy for personal use.

### **S.30 For criticism, review, quotation and news reporting**

- Must have previously been made available/communicated to the public
- News reporting must be of current events and excludes photographs.

### **S.31 For incidental inclusion** – except where deliberately included or includes entire soundtracks.

**S. 31A-31F For Disabled Persons** - There are provisions which enable an accessible copy of any work to be provided to disabled persons under certain conditions. Please contact Disability Support officer for further information or to make a request.

## Education Exceptions

### **S.32 For illustration for instruction and examination**

- Either those teaching or receiving instruction may rely on this exception.

### **S.34(1) Performing, playing or showing a literary, dramatic or musical work in the course of activities of the educational establishment**

- to persons directly connected with the activities of educational establishment (specifically excludes parents).
- By teachers or pupils in the course of activities of the educational establishment
- At the establishment by any person for the University activities.

### **S.34(2) Playing or showing a sound recording, film or broadcast by such persons at an educational establishment for the purpose of instruction only (not for entertainment or other events).**

- to persons directly connected with the activities of educational establishment (specifically excludes parents).
- By teachers or pupils in the course of activities of the educational establishment
- At the establishment by any person for the purposes of instruction.

### **S.35 Recording of broadcasts by educational establishments**

- Permits the recording of a broadcast and copy of a broadcast to be made by or on behalf of an educational establishment for non-commercial educational purposes (in any medium). Sufficient acknowledgement including source date and time recorded must be attached i.e. labelled
- These recordings can be shown to the public on the premises of the University provided the broadcast cannot be received by anyone outside.
- Further copying and reformatting is also permitted under this exception, for additional stock or back-up but must be labelled as above.

### **HOWEVER**

- S.35 has been superseded by the existence of Licences for recording UK Terrestrial TV/Radio i.e. ERA (see below). But broadcasts received off-air that are currently not included in a licence repertoire, can be recorded under S.35 e.g. feature films and advertisements or foreign producers not represented by [AGICOA](#)

### **S36A Lending copies by educational establishments**

### **S.40A(2) Lending copies by libraries or archives** (except public libraries)

## Off-Air Recording Licences for Education

### ERA Licence ([Educational Recording Agency](#))

The ERA Licence covers recordings of all UK Terrestrial TV and Radio Broadcasts by any member of staff from any location e.g. school, home etc. for non-commercial, educational purposes.

This Licence does **not** cover **feature films** or **advertisements** unless owned by a mandated/member broadcasting or production company, even if they have been broadcast on a licensed channel. However, unlicensed works may be recorded under S.35.

Recordings **must** be clearly and appropriately labelled with the four following items:

- Date (when the recording was made)
- Name of the broadcaster
- Programme title
- The wording 'This recording is to be used only for educational and non-commercial purposes under the terms of the ERA Licence'.

A log of recordings or copies made under the licence may be required for ERA survey purposes.

ERA recordings may be lent to staff or students based in the UK (including UK Distance Learning students) for personal/private viewing or non-commercial, educational purposes only. ERA recommend students sign a declaration to this effect.

Further copying and reformatting is also permitted under the licence for additional stock or back-up but must be labelled as above.

A copy may also be supplied to or requested from other ERA licensed institutions, in return for a blank tape/CD/DVD. (The BUFVC TRILT off-air recordings service functions under this provision of the licence. See below)

Extracts for use in projects are permitted providing they are not edited, altered or amended in any way.

Extracts may not be used as part of a public performance.

Recordings stored digitally on a server should include the above four details as a written opening credit or webpage which must be viewed or listened to, before access to the recording is permitted.

Digital recordings may only be communicated to registered persons (i.e. staff and students) located within the UK, via the University's secure network. Therefore recordings uploaded to Moodle, the Talis Aspire Reading Lists, or any other web based platform must be restricted to UK access only.

### OUW ([Open University Worldwide Ltd](#))

The OUW Off-air recording licence has been discontinued.

Recordings can now be made of Open University programmes that are broadcast on UK television for educational purposes under the terms of the [ERA Licence \(Educational Recording Agency\)](#), as above

BBC and Open University also provide an online service via [OpenLearn](#) which permits certain uses under a [Creative Commons](#) licence.

OU broadcasts can be accessed online via the 'BBC/OU OpenLearn open access site at: <http://www.open.edu/openlearn/profiles/the-openlearn-team>

Under a [Creative Commons licence](#) the recordings can be viewed /downloaded strictly for non-commercial use by individuals or educational establishment.

## On-Demand Services

### **BBC iPlayer, ITV Player, 4oD, Demand Five,**

BBC Online Services, ITV Video on Demand, Channel 4 Video on Demand and Channel Five Video on Demand services are now covered under the terms of the [ERA Licence](#) for linking and showing to staff students for non-commercial, educational purposes.

There is currently no provision in the law for copy/using recordings from on-demand services.

**BBC Online Services Terms** state, "Educational establishments can record and access recordings of BBC content for educational purposes under the terms of the [ERA licence](#). However, On-Demand services are usually secure and recording from BBC iPlayer would require 'circumventing the Technical Protection Measures (TPMs) or the Digital Rights Management (DRM) of the site thereby illegal without applying to the Secretary of State.

However, BBC iPlayer apparently provide DRM free streaming for iPhones, which can be downloaded legally but the resolution and quality have been criticised as not ideal.

Educational establishments can also obtain a copy of a recording of a previous broadcast from BBC Active for use under an ERA licence if it was unable to record the broadcast itself. More information about how to obtain such copies can be found at the [BBC Active website](#)."

**4oD Terms** state "if the Channel 4 Online Service is accessed by an authorised person for or on behalf of an educational establishment for the non-commercial educational purposes of that educational establishment then, provided that:

- a. the educational establishment has taken out and holds a current licence with the Educational Recording Agency (the "ERA"); and
- b. the educational establishment complies with these Terms, including but not limited to the age of consent and viewer guidance provisions.

### **BUFVC ([British Universities Film and Video Council](#))**

Off-air recordings can be requested from the BUFVC TRILT Service under the ERA Licence and used for non-commercial educational purposes as above. This service is particularly useful for ordering physical recordings of upcoming or missed programmes. TRILT recordings can be ordered via your Liaison Librarian.

### **[BoB \(Box of Broadcasts\)](#)**

BUFVC also provide an online service called [BoB \(Box of Broadcasts\)](#) which permits subscribers who hold an ERA Plus licence, to create digital playlists of UK Television or Radio Broadcast recordings, for use in education. The available recordings date back to 2007 or you may request a recording of an upcoming recording from the Programme guide. The recordings can be shown in lectures, or embedded into Moodle and Reading Lists, although access from outside the UK will be restricted, therefore not available to staff or students situated overseas.

To access the **BoB** Service, log into myUniHub, scroll down to My Library and select **BoB** Box of Broadcasts from the A-Z Listing of Databases. You will automatically be logged into the service with your own playlist ready to populate under the MyBoB tab.

Please contact your Liaison Librarian for further information and advice.

### **Satellite/Cable/Overseas Broadcasts/Advertisements and other unlicensed broadcasts**

Until a licence is in place, advertisements, overseas cable & satellite programmes may be recorded free for educational purposes under the CDPA 1988 S.35 'fair dealing' defence for education.

### **Commercially Purchased Video's /DVD's**

Commercial recordings normally have a licence agreement or Terms and Conditions attached, prohibiting the copying, lending, selling or showing to the public.

However, recordings purchased by the University may be screened/shown to students for instructional purposes under S.34(2)

If purchased for the University Library and sold to the Library by the usual supplier, knowing the normal business of the University Library, the film can be lent under an 'implied licence' and under S.36A or S.40A(2) CDPA 1988.

If the recording has been purchased via any other means e.g. by an individual from a store or online, the attached restrictions would apply.

No further copying is permitted without permission from the rights owners.

No format shifting/digitisation is permitted without permission from the rights owners.

**Overseas/Multi-regional DVDs** can be purchased and viewed on a genuinely purchased multi-regional DVD player, not one that has been 'Chipped' or modified illegitimately.

**Unclassified Recordings-** Under the Video Recordings Act (VRA) 1984 S.3 (amended 1993) there is no specific exemption for educational establishments to lend/supply unclassified recordings, but does exempt supply where there is no reward and is not in the course of, or for the 'furtherance of a business'. Therefore libraries and educational establishments may fall within this category. However, supplying to anyone in medical training or training in a related occupation is permitted under S10-11.

**Free/Promotional DVDs** given with Newspapers, magazines etc. can be treated the same as commercially purchased material i.e. restrictions on lending do not apply to libraries.

## **Online and Free Resources**

**TED** <<http://www.ted.com/>>

Ideas worth spreading - inspirational talks from world leaders in politics, information technology and academic fields. Good coverage of business, science and world issues (TED clips also available via YouTube)

**FedFlix** <<http://www.archive.org/details/FedFlix>>

A collaboration between the National Technical Information Service and Public.Resource.Org., which provides free access to historic films from the American government.

**Public Information Films from the UK National Archive** <<http://www.nationalarchives.gov.uk/films>>

Free access to a collection of 20th Century UK government films, including public health promotion films.

**EU Screen** <<http://www.euscreen.eu/>>

This service aims to offer a single point of access to over 30,000 items, of programme content and complementary contextual information, through one freely accessible online portal. Funded by the European Commission within the eContentplus programme project, the consortium is made up of 28 partners and 9 associate partners from 20 European countries (UK partners include the BBC.) You can explore by genre

which includes documentary, entertainment, and news broadcast clips. Copyright information is available on the website.

**ITN Source** <<http://www.itnsource.com/compilation>>

Contains footage (both recent and historic) from Reuters, ITN, ITV Productions, Fox News and Fox, Movietone, Asian News International and other specialist collections. Some compilations are offered free of charge, whereas other services are offered to subscribers only.

**Newsplayer** - 20th Century Captured on Film <<http://www.newsplayer.com/>>

Free access to a collection of historic 20th Century newsreels from the libraries of ITN, Reuters, Paramount, Gaumont,, British Empire News, Visnews and French Pathe. Most footage is of short news clips.

**[MoviesFoundOnline.com](#)** – public domain and creative commons films and documentaries

**Moby** <http://www.mobygratis.com/film-music.html> has made a nice collection of tracks available at mobygratis.com which can be licensed without a fee for use by independent and non-profit filmmakers, film students, anyone who needs free music for their independent, non-profit film, video, or short. The site allows you to listen to the tracks and if you choose to use a track, there's an easy registration process. See [http://www.youtube.com/watch?v=QGI\\_WPq2FcQ](http://www.youtube.com/watch?v=QGI_WPq2FcQ).

Only if you then go on to produce your film commercially would you need to apply for a licence for the music at a modest cost which goes towards a charitable cause.

**YouTube** <http://www.youtube.com> hosts a wealth of music and video uploads but not all are legitimately provided by the copyright owner therefore should be used with caution.

A search for creative commons material will show clips which can be used under the terms of an attached [Creative Commons Licence](#), provided the copyright owner genuinely uploaded the material and attached the CC licence. e.g. <http://www.youtube.com/watch?v=JIIW7SpNDKQ>

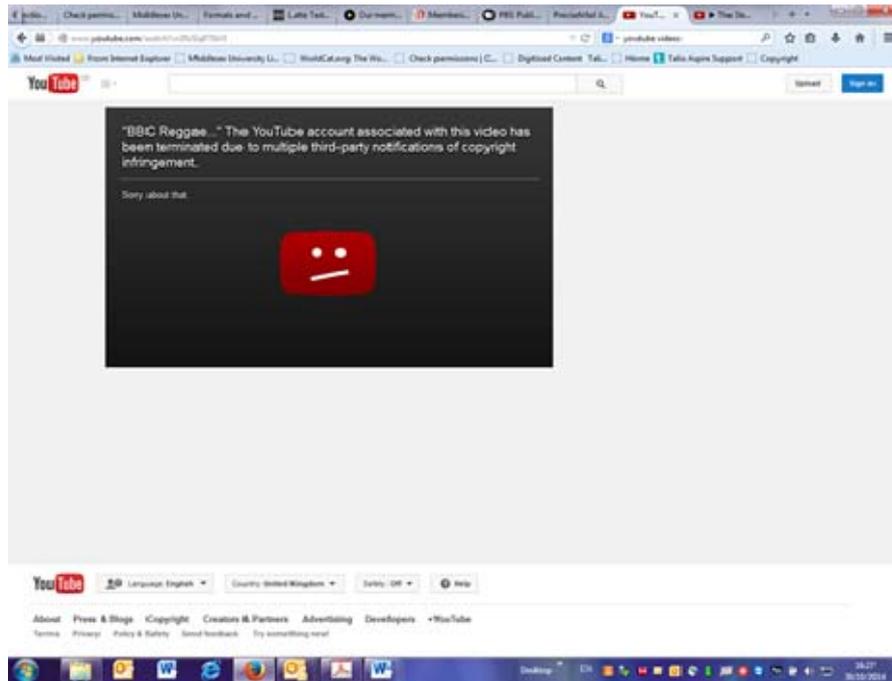
The uploaders name is usually a good indicator of authority or comments made by them e.g.

*"Hi and thanks for the comment, always great to hear positive feedback. Unfortunately the YT filters have blocked/cancelled a fair bit of the stuff I have uploaded for copyright infringement. This my second try at uploading with "modifications" to the original video to try and fool the filters, but heaps of stuff is still being blocked. Sorry : ( Am beginning to experiment with loading shared stuff to my G Drive, so that may be a way around the issue in the future."*

If you are not sure as to the provenance or source, you should never download/embed the file but provide a hyperlink to the URL instead.

If the content has obviously been pirated you should avoid using it at all and find an alternative, because

- a) re-using or directing others to copyright infringing content is regarded as 'secondary infringement'
- b) YouTube are regularly removing infringing content from their site , therefore the clip you are using may not be there when you or your students need to view it. e.g.



**Internet/Google** sources should also be used with caution. Unless the copyright owner genuinely uploaded the material and attached permissions or a Creative Commons Licence, you should avoid using the material. As with YouTube or any other public sharing sites, if in doubt as to the provenance or source, you should never download the file but provide a hyperlink to the URL instead.

**JISC Digital Media** <<http://www.jiscdigitalmedia.ac.uk/>>

Provides advice, guidance and training to the UK's Further and Higher Education community, on still and moving images. The website has tips on tracing and using images legally.

### **Overseas Campuses and Distance Learners**

No licensed recordings ([ERA](#) or [BoB](#)) may be supplied or made available to anyone outside the UK. All licences relating to broadcasts are restricted to use within the UK due to complex rights issues.

Hyperlinking to, or providing copies of legitimately uploaded films or broadcasts from YouTube etc. for overseas students is permitted. However, please be aware that GeoIP recognition software may be attached to some online content, that automatically prevents access from an overseas location. (The [BoB](#) service and the BBC websites use this).

If you provide film or broadcast material to overseas students, it should be tested for accessibility by staff located overseas.

**Digitisation/ Format shifting** is not generally permitted under current UK law, although an exception for Private copying to reformat was one of the recommended changes proposed in the [Hargreaves Review 2011](#)

The [ERA](#) licence, permits digitisation and format shifting of licensed recordings. for educational purposes but must only be accessible within the UK.

Unlicensed off-air recordings made under the [S.35](#) educational exception may also be copied, or re-formatted/digitised, but may only be accessed from within the UK campus.

### **Non-Teaching Events and Film Clubs**

None of the exceptions or licences above could be construed to allow viewing in film clubs or societies. The only exception for showing films/broadcasts and playing sound recordings for education is for the purpose of *instruction*. Therefore as clubs are normally run for entertainment or fund raising purposes, a PVSL (Public Video Screening licence) from <http://www.Filmbank.co.uk> would be required.

A [PRS/PPL](#) licence would also be required for the venue of the screening in order to play the film soundtrack. Please see the [Events](#) information and diagram

For general copyright advice, email [Kate Vasili](#)