

Institute for College Teaching Webinar

# Best Practices for Fair Use of Copyrighted Materials in the Classroom

*Kent M. Johnson*  
*Sociology/Anthropology*

**August 12, 2020**

The logo for SUNY Cortland, featuring the word "Cortland" in a large, white, serif font with a stylized "C" that loops around the "o". Above the "d" in "Cortland", the word "SUNY" is written in a smaller, white, sans-serif font.

# Disclaimer

- The material presented in this webinar is intended for informational purposes only and should not be construed as legal advice.

# Copyright & Course Design

- Copyrighted materials faculty commonly use in courses:
  - Textbooks and supplemental materials
  - Articles and excerpts from books
  - Audio/Visual recordings
  - Images in lecture slides
  - Websites
  - Software programs
  - Apps

# Copyright Law

- U.S. Constitution
  - “Congress shall have [the] power ... To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ...”

Article I, Section 8, Clause 8

- Goal is to balance needs of copyright owners and users:
  1. Owners need incentive to create.
  2. Users need access to creations for opportunities for new ideas, works, etc.

# Common Myths (1)

- Using materials for educational purposes always qualifies as a fair use.
- To qualify as a fair use, the use must ...
  - Be for a qualifying purpose – news reporting, critique, commentary, teaching, or research – and
  - Satisfy the four factors of fair use.

# Common Myths (2)

- As long as I properly cite the source for the material, it's not copyright infringement.
- Properly citing your sources protects you from plagiarism – not copyright infringement.

# Common Myths (3)

- Only institutions can be sued for violating copyright law, not individual faculty.
- *Marketing Information Masters, Inc. vs. San Diego State University and Robert A. Rauch (2006)*
  - Case against San Diego State – dismissed
  - Case against Robert A. Rauch – not dismissed
  - Ultimately: settled for \$15,000 – paid by SDSU

# SUNY Cortland Policy on Copyright and Fair Use





# Copyright

[Home](#) / [Memorial Library](#) / [About Memorial Library](#) / [Policies](#) / [Copyright](#)

## SUNY Cortland Guidelines on Fair Use of Copyrighted Works for Education and Research

SUNY Cortland views both liberal and professional education as integral to its mission and believes that all study teaches students to think critically and prepares them for earning a living. As an institution dedicated to the discovery, creation, and dissemination of knowledge, SUNY Cortland is committed to complying with all the laws regarding intellectual property. That commitment includes the full exercise of the rights accorded to users of copyrighted materials under the "fair use" provisions of federal copyright laws, 17 U.S.C. Section 107. This includes the duplication of audio, video, photographs, illustrations, computer software, and all other works used in the pursuit of teaching, learning, and scholarship. [Copyrighted material stored, viewed, and transported using SUNY Cortland information technology resources must comply with campus copyright policies and appropriate state and federal laws.](#)

SUNY Cortland intends to facilitate the knowledgeable and good faith exercise of full fair-use rights by students, faculty, librarians, and staff in order to achieve its mission and strategic goals of academic excellence and transformational education including teaching,

- [Library Hours](#)
- [Faculty/Staff](#)
- [Library Maps](#)
- [Policies](#)
- [Directions](#)
- [Frequently Asked Questions](#)

SUNY Cortland intends to facilitate the knowledgeable and good faith exercise of full fair-use rights by students, faculty, librarians, and staff in order to achieve its mission and strategic goals of academic excellence and transformational education including teaching, research, education, and related activities. In its vision of education for the common good, the exercise of fair use not only assists students, faculty and staff in learning, teaching, and research but also creates new knowledge and contributes to bodies of knowledge throughout all the disciplines, satisfying the purpose and intent of U.S. copyright laws in fostering creating and disseminating of intellectual works for the welfare of the public.

In this good faith exercise of fair use, balancing the four factors of fair use is an ongoing and often case by case effort: The factors enacted by Congress and applied by the courts to evaluate whether a use qualifies as fair use are:

1. nature and purpose of use;
2. the nature of the copyrighted work being used;
3. the amount and substantiality of the work being used;
4. the effect of the use on the market for or value of the original

4/2011



[SUNY Cortland](#) / [LibGuides](#) / [Library Reserves](#) / [Home](#)

## Library Reserves: Home

Library Reserves provide access to course readings and materials from the educational programs at SUNY Cortland.



### Memorial Library Reserves

- [Online Reserves during COVID-19](#)
- [What are Reserves](#)
- [How to Place an Item on Reserve](#)
- [Reserves & Copyright](#)**
- [Accessibility at Memorial Library](#)

#### I have questions about copyright?

SUNY Cortland faculty are responsible for making the initial good faith determination of fair use and acknowledging copyright compliance when making requests to place an item on reserve; SUNY Cortland faculty are responsible for obtaining permission or paying royalties as appropriate. Please see the [Fair Use](#) and [Copyright policy](#). Further questions concerning copyright can be addressed to [Jennifer.Kronenbitter@cortland.edu](mailto:Jennifer.Kronenbitter@cortland.edu).

#### How do I determine if my content is eligible under Fair Use?

Please see [Fair Use checklist](#).



# Factor 1: Purpose of Use

## Favors Fair Use

- Nonprofit & educational
- Teaching, research, scholarship, or critique
- Transformative
- Restricted access

## Opposes Fair Use

- For profit
- Broad distribution
- Omit author
- Done to avoid fee
- Entertainment

# Factor 2: Nature of Work

## Favors Fair Use

- Published
- Non-fiction
- Facts
- Not sold in educational market

## Opposes Fair Use

- Not published
- Fiction
- Highly creative
- Sold in educational market
- Sold for 1-time use

# Factor 3: Portion Used

## Favors Fair Use

- Quantity = small
- Qualitatively = insignificant
- Portion used tailored to permitted purpose

## Opposes Fair Use

- Quantity = large
- Qualitatively = significant/central
- Exceeds that reasonably necessary for permitted purpose

# Misconceptions

## Related to Portion Used

- No universal legal threshold for the portion used (i.e., up to 10% or one chapter)
  - *Cambridge University Press et al vs. Patton et al* (Georgia State University)
- According to the law, the portion used must be “reasonable” in regards to purpose of use. It does not require the smallest or most narrowly drawn portion to be used as an excerpt.
- “Heart of the work” is NOT protected by fair use

# Factor 4: Effect on Market

## Favors Fair Use

- Copy used was lawfully obtained
- Insignificant impact on market
- No permissions mechanism
- Few copies made

## Opposes Fair Use

- Copy was not lawfully obtained
- Negative impact on market
- Reasonable permissions mechanism
- Unsecured setting



# Case Study 1

- Faculty member owns a copy of an edited volume of scholarly work and scans two chapters to upload to the LMS for student access.
- Is this consistent with fair use?

1. Purpose or character of use
2. Nature of work
3. Portion used
4. Effect on market

Teaching



Nonfiction



< 10%



Minimal



# Best Practice Guidelines for Different Materials Used in Course Design

# Guideline #1

## Faculty-created Course Materials

- If you create your own course materials (and retain ownership of the copyright to those materials\*), you may use them in the development and delivery of any course you choose regardless of delivery method.
- \*In general, SUNY faculty own the copyright to materials they create
  - Does not apply to faculty at community colleges
  - Specific work-for-hire: depends on language in contract
  - <https://system.suny.edu/academic-affairs/faculty/faculty-ownership/>

# Guideline #2

## Personal (Faculty-owned) Copies

- **F2F**
  - Use as handouts, show video, etc.
  - Cannot scan and distribute entire books
- **Online**
  - Articles and book excerpts
    - Distribute as handouts
  - But to stream video ...
    - Institution must stream (not individual) and retain digitized copy
    - Faculty must formally donate video to library collections

# Guideline #3

## Textbooks and Supplemental Materials

- **Faculty**
  - If you adopt the text, you may use it and supplemental materials.
- **Students**
  - These materials are designed for student purchase, and students must purchase the text and access to supplemental materials intended for students.

# Guideline #4

## Library Resources – Electronic Articles, eBooks, and Streaming Media

- Link to materials (fair use is not an issue)
- Posting PDFs of articles and eBook chapters
  - Per license
  - Per fair use
- Embedding streaming media in Blackboard
  - If the embed option is available, then okay to do so
  - See Memorial Library policy on streaming entertainment videos produced in the last 10 years <https://cortland.libguides.com/c.php?g=990183&p=7163167>

# Guideline #5

## Library Resources – Print Articles and Books

- Post PDF of scanned materials
  - Per fair use
    - Articles
    - Book excerpts, not entire books
- Place on reserve
  - Memorial Library Reserves policy
  - <https://cortland.libguides.com/c.php?g=990183&p=7163167>



# Guideline #6

## Open Access Materials

- Open access describes the method of distribution of the material and is not related to copyright law.
- Use should be consistent with what is authorized per OA license.
- If uncertain, provide a link in LMS instead of posting PDF or embedding.

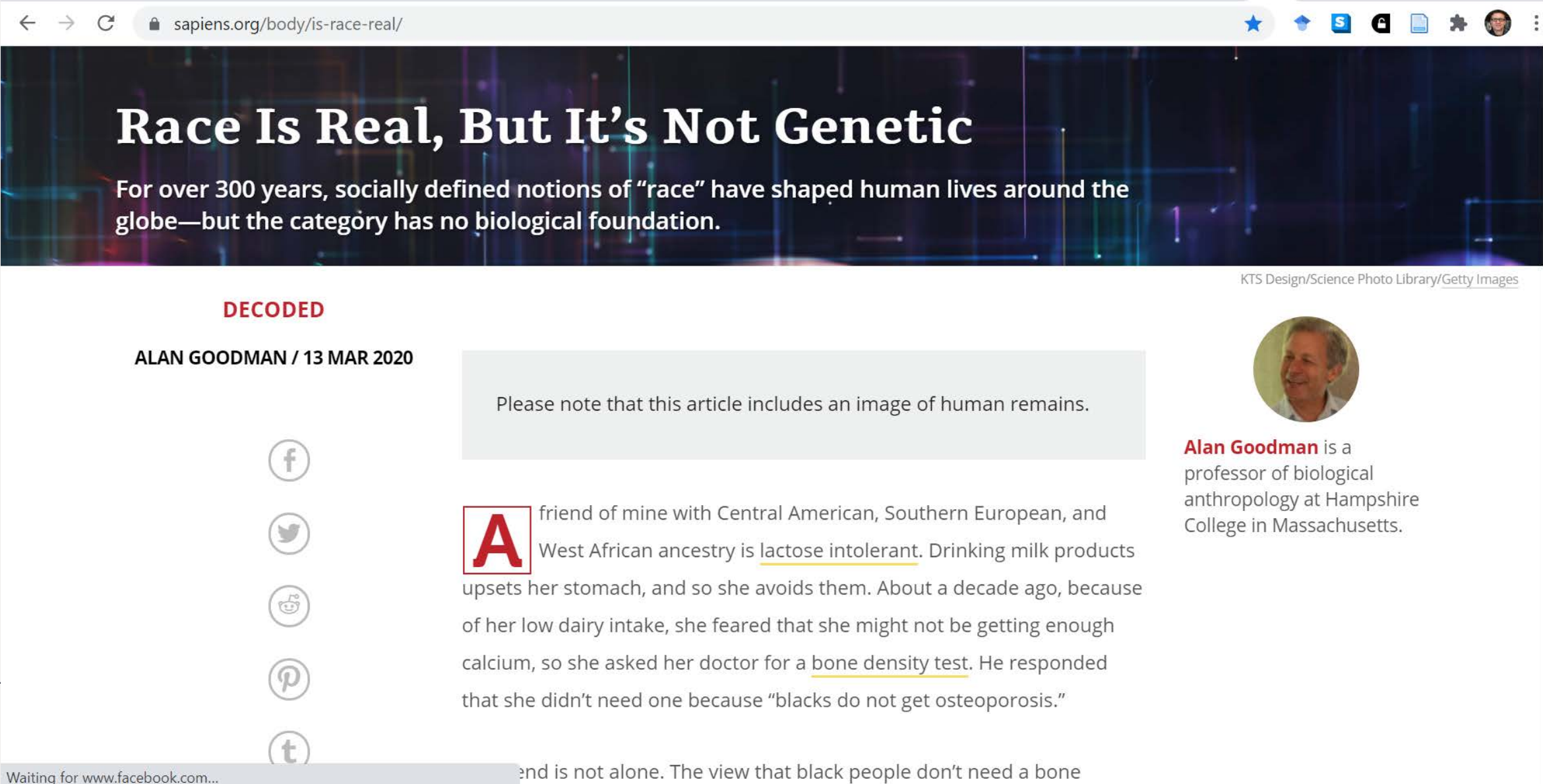


# Guideline #7

## Free Websites

- Provide link to the website
  - URL is public information (street address)
- Screenshot (image or pdf)
  - Consistent with fair use

<https://www.sapiens.org/body/is-race-real/>

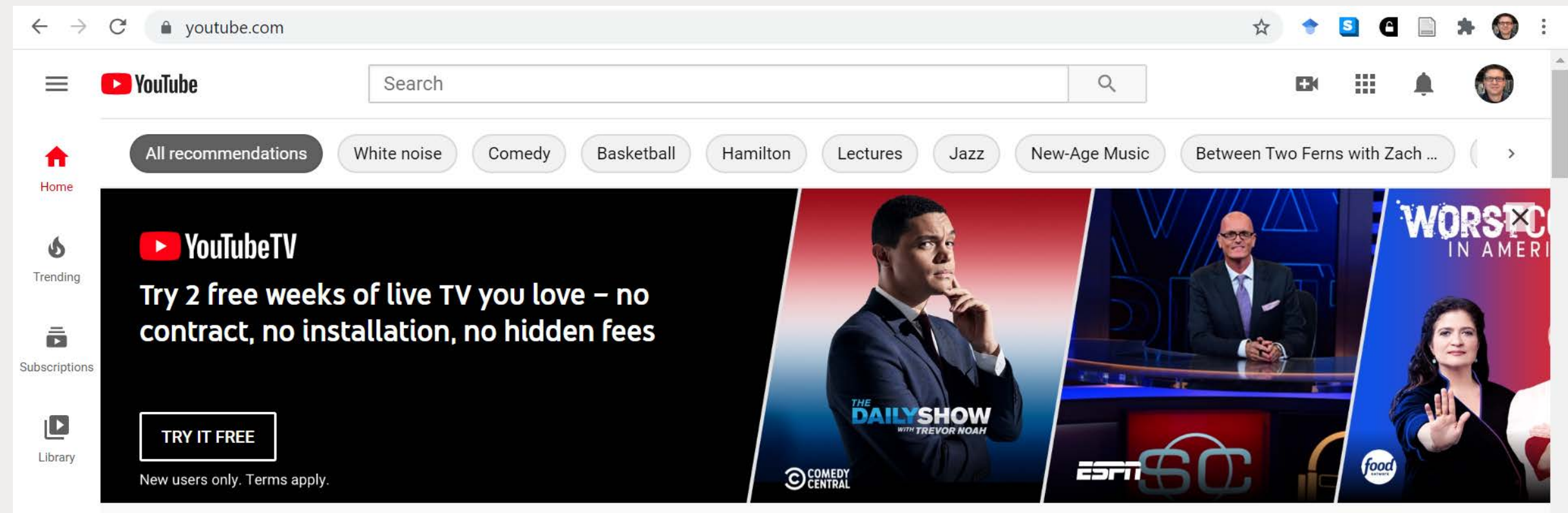


The screenshot shows a web browser window with the URL [sapiens.org/body/is-race-real/](https://www.sapiens.org/body/is-race-real/). The article title is "Race Is Real, But It's Not Genetic" with a subtitle: "For over 300 years, socially defined notions of 'race' have shaped human lives around the globe—but the category has no biological foundation." The author is Alan Goodman, dated 13 Mar 2020. A social media sharing sidebar on the left includes icons for Facebook, Twitter, Reddit, Pinterest, and Tumblr. A bio for Alan Goodman is on the right: "Alan Goodman is a professor of biological anthropology at Hampshire College in Massachusetts." The article text begins with "A friend of mine with Central American, Southern European, and West African ancestry is lactose intolerant. Drinking milk products upsets her stomach, and so she avoids them. About a decade ago, because of her low dairy intake, she feared that she might not be getting enough calcium, so she asked her doctor for a bone density test. He responded that she didn't need one because 'blacks do not get osteoporosis.'" A note at the top right of the article says "Please note that this article includes an image of human remains." The browser's address bar shows "Waiting for www.facebook.com..." and the bottom of the page shows "end is not alone. The view that black people don't need a bone".

# Guideline #8

## Free Media - YouTube

- Are media lawfully posted?
- If no, do not use.
- If yes, you can:
  - Provide link OR
  - Embed, if owner posted it with embed option turned “on”



# Guideline #9

## Materials not Protected by Copyright Law

- You may use the following in your courses (f2f and online) in whatever manner you wish:
  - Blank forms;
  - Works placed in the public domain by the creator;
  - Works for which the copyright has expired;
  - Works created by the federal government (not necessarily states);
  - Facts, formulas, theories, research methodologies, and statistical techniques.

# Case Study 2

- A university library's film collection includes a copy of Oliver Stone's 1987 film "Wall Street," a fictional portrayal of capitalistic excess and greed. A faculty member wants to stream the entire movie to students enrolled in an ethics course. After watching the film, students will be required to write an essay responding to the question: "Is greed good?"
- Wait a minute....

# Revisit Fair Use Factors

- How is streaming an entire fictional movie NOT a violation of fair use?
- Consider the four factors:

1. Purpose or character of use

- Nonprofit & educational
- Teaching, research, scholarship, or critique
- Transformative
- Restricted access

Teaching



Becomes critical issue



2. Nature of work

Fiction



3. Portion used

100%

Is it “reasonable”?

4. Effect on market

Potential



# Transformative = Fair Use

- Transformative use doctrine
  - “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message”
- Examples of Transformative Use
  - Parody
  - Plagiarism detection
- Things to consider:
  - Different purpose (critique vs. entertainment)
  - Different audience

# Case Study 2

- A university library's film collection includes a copy of Oliver Stone's 1987 film "Wall Street." A faculty member wants to stream the entire movie to students enrolled in an ethics course. After watching the film, students will be required to write an essay responding to the question: "Is greed good?"
- Is this use transformative?
  - Different Audience: enrolled students in specific course – not the general public.
  - Different Purpose: illustrate a point in an ethics course – not to entertain.
  - Critique: the essay assignment requires a focused critique of the film that clearly relates to the subject matter of the course.

# General Takeaways

- Demonstrate good faith
- Develop working knowledge
  - Be familiar with institutional policies
- Training + resources
  - Codes of Best Practices
    - The Code of Best Practices in Fair Use for Academic and Research Libraries, Center for Media & Social Impact <http://www.cmsimpact.org/libraries#code>
  - Public Domain Resources
- Specific questions concerning copyright can be addressed to Jennifer L. Kronenbitter, Director of Libraries, Memorial Library



# Questions?

# Resources

- SUNY Copyright Information <https://system.suny.edu/academic-affairs/faculty/faculty-ownership/>
- SUNY Cortland Copyright Policy
  - <http://www2.cortland.edu/library/about/policies/copyright.dot>
- Codes of Best Practices in Fair Use
  - Center for Media & Social Impact <http://cmsimpact.org/fair-use>
  - Code of Best Practices in Fair Use for Academic and Research Libraries <https://www.arl.org/code-of-best-practices-in-fair-use-for-academic-and-research-libraries/>
  - Georgia State University <https://research.library.gsu.edu/copyright/fairuse>

# Sources

- Enghagen, Linda K. (2019). Copyright & Fair Use, Part I: The Fundamentals. An *Online Learning Consortium* Workshop.
- Enghagen, Linda K. (2019). Copyright & Fair Use, Part II: From Court Decisions to “Best Practices”. An *Online Learning Consortium* Workshop.
- Memorial Library, SUNY Cortland  
<http://www2.cortland.edu/library/about/>

SUNY  
Cortland