**Can an instructor stream a movie into the classroom**

**using a personal streaming account, such as Netflix®?**

It depends on the terms in the subscription agreement, but probably not. Streaming movies for educational purposes is a confusing issue. Even though it may be permissible under copyright law, the subscription agreement may prohibit the activity under contract law. Copyright law only requires the movie to be “lawfully” acquired in order to use it in the classroom. If an instructor purchases a streaming service subscription, such as Netflix, then the “lawfully acquired” criterion has been met. Unfortunately, when an instructor signs up for a streaming service account, the instructor is essentially waiving all rights under copyright law, and agreeing to be bound by the subscription agreement, which is governed by contract law. An instructor will need to review the terms of the subscription agreement which now governs the situation.

The subscription agreement is a contract and the promises made in the contract must be kept. Most subscription agreements use language that allows the personal, non-commercial use of the streaming service. Unfortunately, most subscriptions agreements prohibit the public performance of movies available through the streaming service. Let’s review the Netflix Terms of Use as presented on their website on July 28, 2015.

**6. Netflix Service**

1. You must be 18 years of age, or the age of majority in your province, territory or country, to become a member of the Netflix service. Individuals under the age of 18, or applicable age of majority, may utilize the service only with the involvement of a parent or legal guardian, under such person's account and otherwise subject to these Terms of Use.
2. The Netflix service, and any content viewed through our service, are for your personal and non-commercial use only. During your Netflix membership, we grant you a limited, non-exclusive, non-transferable, license to access the Netflix service and view movies and TV shows through the service on a streaming-only basis for that purpose. Except for the foregoing limited license, no right, title or interest shall be transferred to you. You agree not to use the service for public performances.

The highlighted text authorizes personal, non-commercial uses and prohibits public performances, which requires an instructor to understand what a public performance is, as related to the classroom. The best way to define these words is through copyright law which 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 results in any performance being conducted there as a public performance. Whether or not a fee is charged to view a performance 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 persons outside the normal circle of family or social acquaintances is 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 of a course. In these situations, the composition of the audience is evaluated.

Basically, you can only use the service to stream movies into a private setting for your family and friends to view. This is typically referred to as “personal use” rights. The classroom is open to anyone who wants to enroll in the class, so it would be considered an area open to the public. Thus, any performances in the classroom would be considered a public performance. If for some reason the classroom is not considered an area open to the public, but rather a private setting reserved for only enrolled students, the students are not considered family or social acquaintances of the instructor under the public performance definition in copyright law. Therefore, any performances would still be considered public performances in the classroom.

If the streaming service is related to an institutional account that the college or university has acquired the right to use through a subscription agreement, then the terms of this subscription agreement must be reviewed to determine what rights have been obtained. Although Netflix did not offer an “educational” subscriptions at the time this memo was written, other streaming services may offer such a subscription. If so, you need to review the terms in the educational subscription agreement to determine if you have the right to stream movies into the classroom.

The language in the terms of service or subscription agreement for any movie streaming service needs to be carefully reviewed to determine if public performances are permitted in the classroom.

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