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[SERVICES AND PRICING](#)

[FREE 30 DAY TRIAL](#)

[CONTACT US](#)

[HOME](#)

User Agreement with Discovery Education

IMPORTANT - READ THESE TERMS CAREFULLY BEFORE USING THE PRODUCT OR ACCESSING THE CONTENT ON THIS WEBSITE. BY ACCESSING THE PRODUCT AND/OR THE CONTENT CONTAINED THEREIN, YOU ACKNOWLEDGE AND REPRESENT THAT YOU ARE AN AUTHORIZED USER; THAT YOU HAVE READ THIS AGREEMENT; THAT YOU UNDERSTAND IT; AND THAT YOU AGREE TO BE BOUND BY ITS TERMS.

DEFINITIONS

Content: All the search pages, indexes, databases, individual blackline masters and teachers' guide pages, online help, video, text, still images, audio materials and all other content provided by Discovery Education or hosted on the Website or otherwise offered in connection with the Product.

Community: The territory covered by the Subscriber's license.

Fees: The fees payable by Subscriber to Discovery Education in consideration for the licenses contained herein.

Product: The unitedstreaming™ service that provides educational video, text, still images and audio materials to members of the educational industry through streaming and downloadable technology delivered via the Internet or a secured Intranet site.

Student: An individual who is enrolled in or attends classes in the Community.

Subscriber: The school district or other school governing body that has obtained a license on behalf of the Users in the Community to access and use the Product for educational or research purposes during the Term.

Subscriber Agreement: The Agreement under which Subscriber has obtained a right on behalf of its Users to access the Product and the Content.

Term: The period of time for which Subscriber has obtained a license on behalf of its Users to access the Product and the Content.

Discovery Education: Discovery Enterprises, LLC, the owner of the Product.

User: Subscriber; an educator, administrator or Student in the Community.

Website: The website located at www.unitedstreaming.com.

1. **Grant of License.** For the Term of the Subscriber Agreement (provided that, if User is a Student, User remains a Student), Discovery Education grants to User a limited, non-exclusive, revocable license to access the Product via the Website or other means that Discovery Education may set forth from time to time, and to download, use, reproduce and edit the Content in accordance with the terms of this Agreement. This license may not be transferred to third parties, nor may User allow an unauthorized third party to gain access to the Product, the Content or any Log-In Information (as defined in Section 2 below). Without limiting any other provisions in this Agreement, any violation of this provision constitutes a breach of this Agreement, and grounds for immediate termination by Discovery Education.
2. **Log-In Information.** User has been provided with a valid username, password, passcode and IP authentication number for the purpose of accessing the Product and the Content (the "Log-In Information"). All Log-In Information must be kept confidential, and may only be used by User. The unauthorized use of any Log-In Information, either with or without User's knowledge, shall be deemed a breach of this Agreement, and may constitute a violation of Discovery Education's copyrights. User is responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to the Product and/or the Content by unauthorized persons. Unauthorized access to or use of the Product and/or the Content by someone using User's Log-In information may be attributed to User.
3. **User Agreement.** Discovery Education may from time to time make amendments to this Agreement. Such amendments will become effective when Discovery Education posts an updated User Agreement on the Website, or when Discovery Education otherwise provides notice to User of any amendments. User is responsible for periodically checking the posted User Agreement for updates, and User shall be bound by the terms of the User Agreement posted on the Website at the time of User's Website access. Any amended User Agreement shall supersede the previous version of the User Agreement.
4. **Communications from Discovery Education.** Discovery Education will periodically contact User for customer service purposes, including without limitation by providing Product information (such as Product updates and Content changes) and Product integration ideas. By accessing the Product and the Content, User consents to receive such communications.
5. **Conditions Regarding Use of the Content.**
 1. Content Shall Be Used for Education Purposes Only. The Product and the Content may be used for bona fide educational and research purposes only. In no event shall the Content be used in any commercial or for-profit manner (including without limitation as part of any public exhibitions where an admission fee is charged for viewing) without Discovery Education's advance written permission. In

no event shall the Product or the Content be used outside of the scope of this Agreement, or be used beyond the Term of this Agreement, except for Student Projects (as defined in Section 5(e) below).

2. **Original Intent and Purpose of Content.** User agrees to maintain the original intent of all Content. For clarity of purpose, this means that the Content should not be used in a manner that disparages the Content or Discovery Education, or in any manner that may be deemed inappropriate by Discovery Education in its sole discretion.
3. **Security of the Content and the Website.** User shall not take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Product's control or security systems, nor allow or assist a third party to do so. This prohibition includes but is not limited to hacking, de-compiling, disassembling and reverse-engineering the Website or the Content.
4. **Content Displayed on the Website.** User shall not remove, obscure or alter the Content, or the Website itself, and shall not combine or merge the Content with any other programs or content, except as expressly permitted in this Agreement. User shall not sublicense, distribute, rent, lease, transfer or otherwise make the Content available to any third party, or make the Content accessible to any party by broadcast or transmission, including without limitation by television, cable, satellite, telephony, wireless, closed-circuit or Internet broadcasting, or use the Content for systematic downloading, service bureau redistribution services, printing for fee-for-service purposes and/or the making of print or electronic copies for transmission to non-subscribers, except as expressly permitted in this Agreement. For the avoidance of doubt, all provisions of this Agreement relating to the Content shall also govern Content that is edited in accordance with this Agreement.
5. **Student Projects.** Student Users may use the Content in a bona fide educational or research project created by such Student User (each, a "Student Project") beyond the Term of the Subscriber Agreement, on the following conditions: that the Student's access to the Content was and will continue to be in accordance with the terms and conditions of this Agreement; and provided that the Student Project is used by the Student User only for non-commercial, personal use. In no event shall a Student User reproduce his/her Student Project, or distribute his/her Student Project to any third party, except that a Student User may display a Student Project for portfolio purposes. The portion of the project that contains Content shall at all times remain the sole and exclusive property of Discovery Education.
6. **Content Format May Not Be Converted.** Under no circumstances may a User convert the Content from digital to analog format, such as by recording a video clip onto a VHS videotape. **Violation of this Section 6 may constitute copyright infringement.**
7. **Permitted Uses of Content.**
 1. **Videos and Video Stills.** User may download only the video clips designated on the Website as downloadable. User may freeze a video clip in order to view a video still, provided that User uses presentation or multimedia software such as or substantially similar to PowerPoint, Microsoft Word, HyperStudio, Corel WordPerfect, AppleWorks, DreamWeaver, Corel WordPerfect, Microsoft FrontPage, Claris HomePage, KidPix Studio Deluxe and Teach4Learning's Media Blender, and further provided that the presentation or multimedia software license allows for such use. User may also project a frozen video image or still image using Smartboard™ or a similarly designed display device. User may edit, and incorporate into third-party video editing software for editing purposes, those videos designated with a movie clapboard icon, including by shortening such videos, by changing the audio content or the footage of such videos and/or by adding text and/or other content to such videos. Videos without a movie clapboard icon may not be edited or altered in any way, and may not be incorporated into or used in connection with any video editing/production software. Under no circumstances may User print, copy or otherwise reproduce a video or video still image into any media format that is not expressly permitted by this Agreement, including but not limited to converting any video from digital to analog format.
 2. **Ancillary Materials.** The Content may include certain ancillary educational materials, such as student activity sheets, blackline masters and teachers' guides ("Ancillary Materials"). User may modify, alter and revise the Ancillary Materials to meet specific instructional needs, provided that the following statement is prominently displayed on all such revised Ancillary Materials, in addition to any other proprietary notices, and with the understanding that Discovery Education shall continue to own the Ancillary Materials:

" Revised with the permission of Discovery Education. Discovery Education is not responsible for the content or accuracy of the revision."
 3. **Distance Learning.** Some Content on the Website may be designated as approved for distance learning. User may use the distance-learning content to create distance-learning applications such as Web pages, or may use the distance-learning content in connection with online distance-learning software, such as Blackboard; provided that the Content is at all times kept on a secured server, viewable only by Users having permission to access the Content, and hosted on a website or website application that is protected by a secure control system. Only bona fide Users are to be allowed access to the Content; no "visitors" shall be allowed to view or access the Content. Content may remain uploaded as provided above for the Term of the Subscriber Agreement. Notwithstanding the foregoing, in some circumstances, for security purposes, Content will only be available via streaming from Discovery Education's servers.
 4. **Images.** User may incorporate images from the Product's image library into multimedia productions, print productions and broadcasting projects (i.e., closed-circuit television or cable television), which may be viewed by both Users and non-Users, provided that the images may not be altered, nor used for any commercial purpose.
8. **Attribution and Citations.** User shall maintain all proprietary notices on the Content, and shall include proper citation information for all Content used in any end product. Watermarks, title names and producer information within video content may not be edited, removed or obstructed. Reference to Discovery Education as the source of the Content is required for all Content including video clips, video stills, images and Ancillary Materials. User shall ensure that the unitedstreaming™ name and logo shall be prominently displayed on all User materials.

Examples of proper citation format for video and image are as follows:

MLA Example for Video:

Danny and the Dinosaur. By Syd Hoff. Weston Woods, 1990. Discovery Enterprises, LLC. 30 Nov. 2001 <<http://www.unitedstreaming.com>>

APA Example for Video:

Syd Hoff (Author) & Weston Woods (Publisher). (1990). Danny and the Dinosaur [Motion Picture, streaming video]. Retrieved April 3, 2002, from Discovery Enterprises, LLC: <http://www.unitedstreaming.com>

MLA Example for an Image:

Name of the Image. By Paul Fuqua. 2003. Discovery Enterprises, LLC. 01 Jan. 2003 < <http://www.unitedstreaming.com>>

APA Example for an Image:

Fuqua, Paul (2003). Name of the image [Image]. Retrieved January 1, 2003, from Discovery Enterprises, LLC: <http://www.unitedstreaming.com>

Other examples of proper citation for K-12 schools can be found at http://www.landmark-project.com/citation_machine/index.php.

9. Ownership; Copyrights And Trademarks.

1. Ownership of Content: User acknowledges that as between User and Discovery Education, ownership in and to the Product, the Website and the Content, including but not limited to video, text, still images and audio materials, and all intellectual property or other proprietary rights therein, shall remain with Discovery Education. Without limiting any other legal rights or remedies Discovery Education may have, User agrees that any and all use of the Content by User is governed by and shall be in compliance with United States trademark and copyright laws. Nothing in this Agreement shall be construed to give User ownership in the Product, the Website or the Content. User acknowledges that User has no right to use the Content other than as set forth in this Agreement. All rights not expressly granted are reserved to Discovery Education.
2. Student Projects. Students may own the portion of the Student Project that is severable from the Content.
3. Reporting Infringement. By subscribing to, accessing and/or using the Product, Users agree to report to Discovery Education all claims or suspected claims of copyright or other infringement of Discovery Education's intellectual property or other proprietary rights. Claims of infringement should be directed to Discovery Education's VP of Product Development at One Discovery Place, Silver Spring, Maryland 20910.

10. Termination and Effect of Termination.

1. Termination. This Agreement will become effective upon acceptance of this Agreement by User clicking the "**I ACCEPT**" button, and this Agreement will remain in effect for as long the underlying Subscriber Agreement remains in effect. Discovery Education may terminate this Agreement immediately if: (i) the underlying Subscriber Agreement is terminated in accordance with its terms; (ii) User violates this Agreement; (iii) Discovery Education believes in good faith that User's conduct violates or may violate applicable law; or (iv) Discovery Education believes in good faith that the conduct of User is harmful to the interests of Discovery Education or other subscribers or users. These termination rights are in addition to and separate from the termination rights that Discovery Education has under the Subscriber Agreement.
2. Effect of Expiration or Termination. Upon expiration or prior termination of this Agreement, and except for the continuing uses permitted under Section 6 above (where those uses are not made inapplicable by the circumstances under which the underlying Subscriber Agreement is terminated), all rights granted herein shall terminate and revert to Discovery Education; all Content must be erased or deleted from any storage devices, including but not limited to servers, hard drives, CDs or Zip disks; and all access to and use of Product, the Website and the Content must cease. Users must immediately remove, delete and/or destroy all Content except as may be specifically allowed in this Agreement (where those uses are not made inapplicable by the circumstances under which the underlying Subscriber Agreement is terminated). In no event shall any ownership rights in or to the Product, the Website or the Content be transferred to the Subscriber or its Users. All benefits in and to the Product, the Website and the Content shall inure to Discovery Education.

11. **User Warranties**. By accessing the Product and/or using the Content, User warrants as follows: (i) User will comply with the Agreement, as it may be amended pursuant to Section 3 above; (ii) any materials User may merge with the Content, or any revision that User may make to the Content, as permitted by this Agreement, do not and will not contain any libelous, unlawful or infringing materials or content, and will not infringe upon any party's proprietary rights, including but not limited to statutory or common-law copyright, trademark and right of privacy; (iii) the Product and the Content shall not be modified or altered except as specifically allowed in this Agreement; (iv) all copyright, trademark and proprietary notices included with, attached to or embedded in the Product or the Content will be maintained without modification, obstruction or deletion, including but not limited to proper attribution to Discovery Education as the owner of the Product and the source of the Content; and (v) all Log-In Information shall be maintained confidentially.

12. **Disclaimer Of Warranties; Limitation of Liability**. THE PRODUCT AND THE CONTENT ARE PROVIDED AS IS, AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND, EXCEPT AS MAY BE OTHERWISE STATED IN THIS AGREEMENT, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. UNITED LEARNING DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE PRODUCT OR THE CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY UNITED LEARNING OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF UNITED LEARNING'S OBLIGATIONS HEREUNDER, AND USER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. LIABILITY FOR ALL CLAIMS ARISING HEREUNDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY SUBSCRIBER TO UNITED LEARNING UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL UNITED LEARNING BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

13. Miscellaneous.

1. Law. This Agreement shall be construed and enforced under the laws of the State of Maryland, USA without reference to the choice of law principles thereof. User hereby consents to and submits to the jurisdiction of the federal and state courts located in the State of Maryland. User waives any defenses based upon lack of personal jurisdiction or venue, or inconvenient forum.
2. Severability. If any provision herein is unenforceable, then such provision shall be of no effect on any other provision hereof.

3. Waiver. No waiver of any breach hereof shall be deemed a waiver of any other breach hereof.
4. Remedies. Rights and remedies granted hereunder are cumulative. The exercise of one shall not diminish or affect any other rights or remedies at law or in equity. User's sole remedy under this Agreement shall be an action at law for damages; User shall not be entitled to equitable relief.
5. Surviving Obligations. Each party's representations, warranties, indemnities and confidentiality obligations and the provisions regarding ownership of intellectual property shall survive the expiration or prior termination of this Agreement.
6. Controlling Language. User agrees that this Agreement has been written in the English language, and all provisions of this Agreement shall be construed and interpreted in the English language as commonly used in the United States of America.



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