



TOPIC: THE TECHNOLOGY, EDUCATION AND COPYRIGHT HARMONIZATION ACT OF 2002 (TEACH ACT)

DISCUSSION: On November 2, 2002 the President signed into law the Technology, Education and Copyright Harmonization Act of 2002. The TEACH Act amends the Copyright Act of 1976 by rewriting Section 110(2) and adding a new Section 112(f). Together, these revisions give instructors at accredited nonprofit educational institutions and governmental bodies teaching via interactive digital networks on campus and at a distance, enhanced capability to employ most third-party copyrighted works in electronic courseware without the need to secure permission from copyright owners. These changes bring into closer congruity an instructor's rights to use copyrighted works in face-to-face and remote teaching settings.

The new flexibility accorded to instructors, however, requires significant actions and investment by institutions to protect the integrity of the copyright works used in the courseware and to promote respect for the rights of copyright owners.

The Section 110(2) amendments that *expand* instructor rights include:

- transmission of the performance via digital networks of:
 - an entire non-dramatic literary or musical work; and
 - reasonable and limited portions of all other performances, including those incorporated in any type of audio-visual work, such as videotapes and films, and any dramatic musical work.
- transmission of displays of works via digital networks, including still images, in amounts comparable to typical face-to-face displays in live classroom session.
- transmissions made to students officially enrolled in the class wherever they are located, whether a classroom, a library, a dorm room, at work, or at home.

The counterbalancing *limitations and restrictions* include the following:

- the transmitting institution must be accredited and nonprofit

- the transmission of the performance or display must be
 - part of the systematic "mediated instructional activities" of an accredited nonprofit institution or governmental body.
 - "mediated instructional activities" consist of the use of works (1) as an integral part of the class experiences controlled by or under the direct supervision of the instructor; and (2) analogous to a live classroom performance or display.
 - directly related and of material assistance to the teaching content; and
 - made solely for and, to the extent technologically feasible, limited to reception by students officially enrolled in the class for which the transmission is made or to officers or employees of governmental bodies.
 - password access or similar authentication systems are sufficient, as opposed to a general requirement of network security

Works primarily produced or marketed for the digital distance education market, works not lawfully acquired or made, and works such as textbooks and coursepacks typically purchased by students individually are not covered under Section 110(2).

The transmitting institution must:

- employ technological measures that reasonably prevent the students receiving the transmissions from retaining the works beyond the class session and from redistributing the works to others;
 - this does not constitute an institutional guarantee that the technology selected will be infallible; nor does it require monitoring of recipient conduct.
 - the length of an asynchronous "class session" varies from student to student. It generally is the period during which a student is logged onto the institution's server.
 - the material may not remain in accessible form on the student's computer, but it may remain on the institution or governmental body's server for use in one or more courses, and may be accessed by a student each time he or she logs on to participate in a

particular class session.

- EDUCAUSE and the American Library Association are preparing guidance on TEACH Act technology requirements, scheduled for publication in January. In the interim, the House report (p. 13) identifies software used in streaming to prevent copying, such as Real Player "Secret Handshake/Copy Switch" technology, and digital rights management systems that limit access to and use of encrypted material downloaded onto a recipient's computer as existing technological protection measures that "reasonably prevent retention and further dissemination."
- not interfere with any technological protection measures incorporated by the copyright owner to defeat retention and distribution; and
- provide students, faculty and affected staff with information that describes and promotes compliance with copyright laws, provide notice that the material contained in the course may be copyrighted, and adopt and maintain institutional policies on copyright.

Section 112(f) gives eligible transmitting institutions the right to make copies of digital works and to digitize portions of analog works in order to make the performances and displays authorized by Section 110(2), provided that:

- the copies are retained by the institution and used only for the authorized transmission; and
- the digitizing of the needed portion of the analog work is the result of the fact either that no digital version of the work exists or the existing digital version incorporates technological protection measures that prohibit its use as authorized by Section 110(2).

SUMMARY: The TEACH Act represents a major improvement from prior copyright law, which severely limited the types of works that could be transmitted and required that the transmissions be intended primarily for reception by students in classrooms and similar places devoted to instruction. While all types of works are now covered and the location restriction has been eliminated, the TEACH Act nevertheless includes very real limits on how and how much copyrighted works can be incorporated into online courses. It is therefore important to recognize that, if an instructor's intended use is not permitted under the TEACH Act, it may nevertheless be sanctioned as a fair use under the Copyright Act.

RESOURCES for COUNSEL:

Statutory: [The TEACH Act \(section 13301 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law No. 107- 273 \(116 Stat. 1758, November 2, 2002\)\)](#)

[21st Century Department of Justice Authorization Act, Conference Report, HR Rep. 107-685, 107th Cong., 2nd Sess. \(2002\) at 226-236](#)

[Technology, Education And Copyright Harmonization Act of 2001, Report of the Senate Committee on the Judiciary, S. Rep. 107-031, 107th Cong., 1st Sess. \(2001\)](#)

[Technology, Education And Copyright Harmonization Act of 2001, Report of the House Committee on the Judiciary, HR Rep. 107-687, 107th Cong., 2nd Sess. \(2002\)](#)

Summaries: [Crews, New Copyright Law for Distance Education: The Meaning and Importance of the *TEACH Act*, American Library Association, 2002](#)

[Harper, *The TEACH Act Finally Becomes Law*, 2002](#)

Tutorials: [Crews, Copyright Quickguide, Indiana University-Purdue University. Indianapolis Copyright Management Center](#)

[Templeton, 10 Big Myths About Copyright Explained](#)

Author: [Kenneth D. Salomon, Dow Lohnes and Albertson](#)

View this document in [PDF](#) or [Word](#)
[NACUANotes/Alerts Home Page](#) | [NACUANotes/Alerts Archives](#)
[About NACUANotes/Alerts](#) | [Contact Us](#) | [NACUA Home Page](#)

"To advance the effective practice of higher education for the benefit of the colleges and universities they serve."

*National Association of College and University Attorneys
One Dupont Circle N.W., Suite 620, Washington, D.C. 20036
voice: 202.833.8390 - fax: 202.296.8379*

[Copyright and Disclaimer Notice](#)