The TEACH Act

New Roles, Rules and Responsibilities for Academic Institutions

Signed by President Bush on November 2, 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act is the product of discussion and negotiation among academic institutions, publishers, library organizations and Congress. It offers many improvements over previous regulations, specifically sections 110(2) and 112(f) of the U.S. Copyright Act. The following overview of the TEACH Act seeks to balance the perspectives of both copyright owners and content users, and provide guidance for today’s academic institutions.

A Brief Guide to the TEACH Act

Although copyright law generally treats digital and non-digital copyright-protected works in a similar manner, special digital uses, such as online distance learning and course management systems, require special attention. Some of the special copyright requirements of online distance learning are specifically addressed by the TEACH Act.

The TEACH Act facilitates and enables the performance and display of copyrighted materials for distance education by accredited, non-profit educational institutions (and some government entities) that meet the TEACH Act’s qualifying requirements. Its primary purpose is to balance the needs of distance learners and educators with the rights of copyright holders. The TEACH Act applies to distance education that includes the participation of any enrolled student, on or off campus.

Under the TEACH Act:

- Instructors may use a wider range of works in distance learning environments.
- Students may participate in distance learning sessions from virtually any location.
- Participants enjoy greater latitude when it comes to storing, copying and digitizing materials.

TEACH Act Requirements

In exchange for unprecedented access to copyright-protected material for distance education, the TEACH Act requires that the academic institution meet specific requirements for copyright compliance and education. For the full list of requirements, refer to the TEACH Act at www.copyright.gov/legislation/archive/.

In order for the use of copyrighted materials in distance education to qualify for the TEACH Act exemptions, the following criteria must be met:

- The institution must be an accredited, non-profit educational institution.
- The use must be part of mediated instructional activities.
- The use must be limited to a specific number of students enrolled in a specific class.
- The use must either be for ‘live’ or asynchronous class sessions.
- The use must not include the transmission of textbook materials, materials “typically purchased or acquired by students,” or works developed specifically for online uses.
Only “reasonable and limited portions,” such as might be performed or displayed during a typical live classroom session, may be used.

The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials.

The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut and paste disabling, etc.

**What the TEACH Act Does Not Allow**

The new exemptions under the TEACH Act specifically do not extend to:

- Electronic reserves, coursepacks (electronic or paper) or interlibrary loan (ILL).
- Commercial document delivery.
- Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
- Conversion of materials from analog to digital formats, except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures.

It is also important to note that the TEACH Act does not supersede fair use or existing digital license agreements.

Ultimately, it is up to each academic institution to decide whether to take advantage of the new copyright exemptions under the TEACH Act. This decision should consider both the extent of the institution’s distance education programs and its ability to meet the education, compliance and technological requirements of the TEACH Act.
USING COURSE MANAGEMENT SYSTEMS

Guidelines and Best Practices for Copyright Compliance

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THE MOVEMENT TO COURSE MANAGEMENT SYSTEMS

Industry experts estimate that more than 90% of U.S. colleges and universities use course management systems. These systems are used to post and distribute tens of thousands of copyrighted articles, book excerpts, charts and research data every year. Although many institutions are working hard to address intellectual property issues associated with such usage, copyright policy for course management systems remains inconsistent across campuses and among individual users.

BEST PRACTICES AND GUIDELINES FOR COPYRIGHT AND COURSE MANAGEMENT SYSTEMS

As course management systems and other technologies make copyrighted content more easily accessible by faculty, staff members and other campus personnel, establishing campus-wide policies for the lawful use of content is becoming increasingly critical. The following principles summarize key guidelines and encapsulate examples of best practices followed by many academic institutions regarding the posting and management of copyrighted content in course management systems.

- Online Doesn’t Mean “Free” – Widespread use of the Internet has fostered misconceptions concerning the lawful use of copyrighted information in electronic form. In short, the same copyright rules apply. Simply because content is placed online in a course management system does not mean it is free from copyright protection. Unless fair use or another exception applies, make sure you have permission before posting content. For a sample fair use analysis checklist, visit www.copyright.com/fairusechecklist.

- Limit Course Materials to Small Excerpts – Most experts advise using a single article or chapter, or less, of a copyrighted work. If your course content is larger, it may not meet the fair use criteria.

- Course Management System Postings Require the Same Permissions as Coursepacks – While there are obvious savings—financial and environmental—in eliminating paper copies or coursepacks, traditional copyright rules still apply when using digital technology such as course management systems; when fair use does not apply, the institution must obtain permission from the rightholder or its agent, who may charge a fee for such permission based on the amount of content and the number of people, usually students, who will view the content.

- Course Management Systems Are Not a Substitute for the Purchase of Coursepacks and Textbooks – It violates the intent, spirit and letter of the law to use course management systems as a substitute for the purchase of books, subscriptions or other materials when substantial portions of the material are required for educational purposes.

- Article Links – Providing a link to the content in an online database subscribed to by the institution’s library is allowed under copyright law provided the user is a current member of the institution.

- Get Permission Before Posting – You must secure copyright permissions prior to posting content. Reposting of the same material for use in a subsequent semester requires a new permission.
Passwords Are a Good Start – Restricting access to copyrighted content in course management systems through passwords or other authentication measures is a helpful, good-faith practice because rightsholders typically grant permission and charge fees based on the number of students enrolled in a course. In fact, these types of protections may make rightsholders more likely to grant permission, since they provide a greater level of control than do paper coursepacks. Still, the use of authentication measures, such as passwords by themselves, is not enough to satisfy the fair use standard, and permission is still required prior to use of the content.

Know What You’ve Paid For – Reuse rights included in subscriptions vary greatly by publisher. Be sure to check your license’s terms and conditions to determine if the rightsholder has granted you permission to post the copyrighted work within a course management system. This can alleviate the need to request permission and ensure you don’t pay twice for rights you already hold.

Work From Authorized Originals – When scanning in paper materials (such as textbooks) to create electronic copies, be sure that you are working from legally obtained original copies of the work, either purchased or owned by the institution.

Remove Expired Course Materials Promptly – Make sure you take down (or remove access to) copyrighted materials for a particular class when the term concludes.

Include Copyright Notices – Materials posted in a course management system should contain both the copyright notice from, and a complete citation to, the original material, as well as a clear caution against further electronic distribution.

The Best Way To Secure Copyright Permission For Your Course Management Systems

Copyright Clearance Center makes it easy to obtain permission to use copyrighted content in course management systems. Our convenient online services enable academic institutions—including librarians, faculty and staff, administrators, reprographic services and campus bookstores—to obtain permission to use and to share information with students, colleagues, alumni, the media and more.

Go to copyright.com for instant permission to use copyrighted content from tens of thousands of works—including the leading titles in science, technology, medicine, business and news—in course management systems, as well as e-reserves, interlibrary loan, document delivery, print and electronic coursepacks, classroom handouts and many other formats.

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