
TEACH Act Allows for Distance Education over the Internet

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On November 2, 2002, President Bush signed into law an amendment to the U.S. federal copyright law known as the [Technology, Education and Copyright Harmonization Act](#) (the TEACH Act). The TEACH Act allows accredited educational institutions to show or display to students certain copyrighted materials in the course of distance education, including via the Internet, without permission from the copyright owner and without the payment of royalties. The TEACH Act is of interest to educational institutions involved in distance education, to producers of content used in educational settings, and potentially to technology companies that supply software and other infrastructure used in distance education programs and in protecting digital media.

To promote education, the Copyright Act has long [expressly allowed educators](#) in nonprofit educational institutions to show or display, but not to copy or distribute, copyrighted works in the course of face-to-face teaching in a traditional classroom. This narrowly tailored exemption from liability for copyright infringement is significant for two reasons. First, many of the materials used in the classroom are protected under copyright law, including most books, articles, computer programs, images, artwork, videotapes, musical works, sound recordings, and motion pictures. Second, the owners of these copyrighted materials generally have the *exclusive* right not only to make copies, but also to allow "public"—potentially including classroom—performances and displays of their works. As such, under the copyright law exemption allowing for classroom displays and performances, a teacher could read a copyrighted short story to students in a classroom or show students in a classroom copyrighted pictures, in each case, without risking potential copyright infringement.

This limited "face-to-face" classroom exemption from copyright infringement, however, did not contemplate or allow for performances or displays of copyrighted works to students outside the traditional classroom. Nonetheless, with developments in technology, education has continued to evolve beyond the traditional classroom to include "distance education," where educators attempt to replicate the classroom experience for students in diverse locations using technologies such as personal computers and the Internet. For example, until the TEACH Act, while a teacher could show a copyrighted picture or article to a group of assembled students in a classroom, that teacher would have risked infringing the copyright if the teacher transmitted a copyrighted picture or article over the Internet to a group of dispersed students, even if only for viewing purposes during the limited

duration of an online class session. The TEACH Act addresses this anomaly.

The TEACH Act amends the Copyright Act by expanding the rights of educational institutions to display and perform copyrighted materials for purposes of distance education to students in any location (e.g., home, work or elsewhere), while continuing to permit the use of copyrighted works for face-to-face teaching in classrooms. The TEACH Act does not amend the Copyright Act's provisions with respect to "[fair use](#)," which provisions continue to provide an independent basis for exemption from copyright infringement liability for various purposes, including "teaching (including multiple copies for classroom use), scholarship or research."

Under the [TEACH Act](#), qualified educational institutions may show or display to their students:

- Performances of the entirety of a non-dramatic literary or musical work (e.g., poetry and short stories, *but not* audiovisual works such as film or music videos or dramatic musical works like opera or musicals),
- *Reasonable and limited* portions of any other work (e.g., all audiovisual works such as films and music videos and any dramatic musical work excluded above), and
- Any work in an amount comparable to that which is *typically displayed* in the course of a live classroom session.

Notwithstanding the above, the TEACH Act is carefully limited in scope to ensure that it does not undermine the rights of copyright owners. The performance or display of a work must be directly related *and* of material assistance to the teaching content of the transmission. Moreover, these provisions of the TEACH Act do not apply to:

- works produced or marketed primarily for distance education via digital networks,
- works (such as textbooks, course packs, or other materials) which are typically purchased or acquired by or for students for their independent use, retention or possession, or
- the display of a copy not lawfully made, where the transmitting institution knew or had reason to believe such copy was not lawfully made or acquired.

In addition, educational institutions may only enjoy the benefits of the [TEACH Act](#) if they comply with a variety of statutory requirements, many of which are designed to limit the risks of piracy of copyrighted works, particularly where such works are transmitted digitally. Requirements include the following:

- *Eligible Institutions.* Nonprofit institutions providing post-secondary education must be accredited by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the U.S. Department of Education, and nonprofit institutions providing elementary or secondary education must be recognized by the applicable state certification or licensing procedures.
- *Mediated Instruction.* The performance or display must be made by, at the direction of, or under the actual supervision of an instructor as an integral part of a regular part of systematic instructional activity. Further, with respect to digital transmissions, the use must be analogous to the type of performance or display that would take place in a classroom setting.

- *Limited Recipients.* The transmission must be made solely to students officially enrolled in the course for which the transmission is made, or officers or employees of the government as part of their official duties.
- *Transmitting Party Obligations.* The transmitting institution is required to "institute policies regarding copyright," to provide informational materials to faculty, students and staff members to promote compliance with copyright laws, and to provide notice to students that materials used in connection with a course may be subject to copyright protection. Further, with respect to digital transmissions, the transmitting institution is required (a) to apply technological measures that reasonably prevent recipients from retaining transmitted works beyond the class session and/or further distributing such works, and (b) not to interfere with anti-piracy technologies of copyright owners.
- *Copies, Digital Conversion and Storage.* The TEACH Act permits the transmitting institution to copy digital works for authorized purposes, provided that such copies are retained only by such institution for authorized activities. In addition, under the TEACH Act, qualified institutions are allowed to convert certain analog works to digital format, where no digital version is available or the digital version that is available is subject to technological protection measures that prevent its authorized uses. Finally, the TEACH Act allows the transmitting institution temporarily to store copyrighted works in order to transmit those works for authorized displays and performances, provided that the transmitting institution maintains such works on systems accessible only to anticipated recipients and only for the period of time necessary to facilitate the intended transmission.

Taken together, the TEACH Act requires educational institutions to comply with a wide variety of restrictions in order for such institutions to obtain the benefits of exemption from copyright infringement liability with respect to distance education programs. However, for those institutions that adopt the necessary requirements and procedures, the TEACH Act offers them the right to use copyrighted works in distance education programs, including those offered over the Internet, without copyright owner consent and without the payment of royalties.