

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.

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- 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.