

Copyright and Distance Education: The Impact of the Technology, Education, and Copyright Harmonization Act

ERIK NELSON

Arcadia University, USA

nelson@arcadia.edu

Copyright in the United States can be traced back to the U.S. Constitution in 1787. To encourage authorship of creative works, Congress created a limited monopoly in §106 of the Copyright Act of 1790. In order to balance this monopoly, Congress drafted §107 which provides public access to creative works through fair use. Revisions were necessary due to new information technologies. However, these revisions created an imbalance between traditional and distance education classrooms. In 2002, this imbalance was addressed through the Technology, Education, and Copyright Harmonization Act (TEACH). In an effort to make copyright law friendlier towards Internet-based distance education, Congress modified §110(2), performances and displays, and §112(f), digitization of analog materials. Discussion of the TEACH Act and compliance recommendations for first-time online instructors are addressed.

Since the advent of Johannes Gutenberg's printing of the Bible with his revolutionary printing press in 1455, copyright issues have been debated, laws enacted, and then revised over the course of centuries. The first trace of the concept of ownership by authors and fixed term limitations occurred in 1710 when the British Parliament enacted the Statute of Anne. This statute allowed for the protection of creative works for a period of fourteen years with the option of another fourteen years if the author was alive upon expiration (Association of Research Libraries, 2002). This new statute was in

no way perfect, but it established the importance and need for a balance between the author's needs and the good of the public (Enghagen, 2005a). Litman (2001) further supported this by stating that "Copyright laws ... begin with the principle that neither the creator of a new work of authorship nor the general public ought to be able to appropriate all of the benefits" (p. 15) that are produced when a new work is created.

Building upon the need for a balance between ownership and public access to creative works, the founding fathers of the United States in the Constitution drafted Article I, Section 8, Clause 8 in 1787. "Congress shall have power...To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (U.S. Constitution, 1787). Congress realized that it took considerable effort to produce new and original works of authorship. Therefore, to encourage people to pursue this endeavor, they needed to ensure that their labors would be justly rewarded (Litman, 2001). This was in essence accomplished through the "limited" monopoly created in Article I, Section 8, Clause 8.

The first implementation of the copyright law occurred in the creation of the Copyright Act of 1790. Based upon the Statute of Anne (1710), this law extended specific rights to creators of original works. Even though this Act has been revised numerous times (1831, 1870, 1909, 1976, and 1998), the fundamental rights that authors enjoy basically remain the same after all these years. Circular 92, Copyright Law of the United States (2003) explained that these basic rights are clearly defined in §106 and are listed as follows:

1. Reproduction of the copyrighted work;
2. Preparation of derivative works from the copyrighted work;
3. Distribution of copies of the copyrighted work to the public;
4. Performance of the copyrighted work publicly; and
5. Display of the copyrighted work publicly.

Nonetheless, it is important to remember that each of these rights is balanced with a variety of exceptions (Litman, 2001).

Clearly, §106 solidifies Congress's intentions for enabling authors to gain monetary rewards for their efforts as well as providing motivation to advance this type of endeavor. However, to balance the rights of authors, Congress established the Doctrine of Fair Use in §107 (Enghagen, 2005b). This section details the rights that the public enjoys with respect to works created by others. Generally, fair use revolves around the use of original works for the purposes of criticism, comment, news reporting, teaching,

scholarship, or research (Boettcher & Conrad, 1999). Fair use, an important aspect of teaching, will be discussed later in this article.

Moreover, as time moves on and technological advances continue to occur at an increasing frequency, the delicate balance that exists between the author and the public may need to be revisited. “Advances in technology have produced radical shifts in the ability to reproduce, distribute, control, and publish information” (National Research Council [NRC], 2000). As discussed in *The Digital Dilemma* (NRC, 2000), printed materials can usually be accessed by a few people; however, when those same materials are digitized, there is almost no limit to the audience that can receive them. This may be good news for the public who would like to have access to this material, but it is definitely not good news for authors and publishers.

Therefore, legislation was needed to attempt to bring things back into balance once again. Several issues were addressed through the Digital Millennium Copyright Act, but in 2002, President Bush signed into law the piece of legislation that most directly has an impact on distance education, the Technology, Education, and Copyright Harmonization Act (TEACH).

KEY ITEMS ADDRESSED IN THE TEACH ACT

In creating the TEACH Act, Congress attempted to address copyright concerns brought about by the increasing popularity of online or distance education. Since many of the previous Act’s sections were designed for traditionally delivered instruction, online education was adversely affected or limited to what it could use in the pursuit of materials for digital transmission.

At the same time, producers of copyrighted works were equally concerned about online education due to the increased simplicity with which their works could be duplicated and distributed without any controls for collecting royalties. This simplicity and the fact that online and distance education is growing rapidly causes concern for possible abuses of works that are currently copyright protected.

Therefore, Congress set out to balance the need for protecting the rights of creative works while ensuring that online and distance education were more closely aligned with the rights of the traditional classroom (Tantono, Selby, Bagner, & Sonu, 2002). Seadle (2003) stated that in essence the “TEACH Act was intended to make U.S. copyright law friendlier toward internet-based distance education” (p. 253). This proved to be a more difficult task than expected as the Act failed to pass on its first attempt through

Congress as part of the Digital Millennium Copyright Act (Seadle). It did, however, recommend that the issue be further studied by the Copyright Office and a report was published in May 1999 (Strickland, 2004).

The TEACH Act was finally passed in 2002, included as part of the 21st Century Department of Justice Appropriations Authorization Act (2002). Gone was the old §110(2), which contained 132 words, replaced by the new §110(2) which increased the language to 728 words (Seadle, 2003, p. 253). Dames (2005) stated that most of the TEACH Act language resides in section §110(2); nonetheless, it is spread throughout the entire section causing it to be, what he terms, “clear as mud” (p. 29).

More importantly, the TEACH Act does make allowances for online and distance education in an effort to bring them more closely in line with the traditional classroom as far as copyright exemptions. In doing this, the TEACH Act completed a major revision of §110(2), exemptions of certain performances and displays, and part of §112(f) which deals with the digitization of analog materials.

Before moving forward, it is important to note that before institutions can enjoy the exemptions that are provided in the TEACH Act, they must be in compliance with the requirements that have been set forth by the Act. When examined closely, the requirements of the TEACH Act can be broken down into the following three categories of responsibility: (a) institutional officers, (b) technology officers, and (c) academic instructors. The following sections will examine §110(2) and §112(f) from the viewpoint of those entities and their obligations.

Requirements of the Institution

Accredited nonprofit institution. To enjoy the extensions provided in the TEACH Act, the institution must fall under the categories of “governmental body” or “nonprofit accredited educational institution.” As for the latter, the accrediting body must be recognized by the Council on Higher Education Accreditation or the United States Department of Education (Crews, 2003; Dames 2005).

Dames (2005) further noted that “this prerequisite is important because there are several for-profit distance-based schools” (p. 27). Capella University, University of Phoenix, and Strayer all are affected by this provision regardless of accreditation. Therefore, opportunities provided by the TEACH Act are not available to for-profit institutions as well as those who lack the appropriate accreditations.

Finally, the TEACH Act also pertains to the K-12 environment. Eligibility is also determined in §110(2) which requires “applicable state certification or licensing procedures” (TEACH Act, 2002).

Copyright policy and information. A major requirement of the teach act revolves around the existence or development of an institutional copyright policy. Therefore, each institution must develop policies that focus on copyright and this information must be provided to “faculty, students, and relevant staff members” (TEACH Act, 2002) in an effort to promote compliance with U.S. copyright laws.

However, the TEACH Act does not specify exactly what those policies must include. Nor does it specify how the compliance information should be distributed. Crews (2003) suggested that institutions might consider “developing websites or distributing printed materials” (§20). Regardless of the distribution method, the institution is required to develop or prove that a policy is in existence to begin enjoying the extensions provided in the TEACH Act.

Notice to students. Even though institutions are required to provide informational copyright materials to faculty, staff, and students, they are also required to provide “notice to students that materials used in connection with the course may be subject to copyright protection” (TEACH Act, 2002). This is extremely important due to the digital nature of works provided in the online courseroom and the ease in which they can be duplicated.

To comply with TEACH requirements, institutions should provide an announcement in the courseroom alerting students to the fact that materials being used are not free from copyright considerations. Additionally, it would be advantageous to provide links to websites that provide copyright information. Through these two steps, the institution is demonstrating a good faith effort with respect to the notification condition.

Requirements of Information Technology Officers

Controlled student access. One of the major considerations of the TEACH Act deals with how students will access materials for viewing. In the case of distance education, the transmission must be solely for those students that are “officially enrolled in the course for which the transmission is made; or officers or employees of governmental bodies as a part of their official duties or employment” (TEACH Act, 2002).

In most institutions, this aspect is achieved through the use of a Learning Management System (LMS) that requires a username and password to gain access to courses that students are officially enrolled in.

Retention and dissemination of content. Besides controlling who has access to course materials, technology officers are responsible to “reasonably prevent retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session” (TEACH Act, 2002). First of all, to do this, the technology officer is expected to investigate and use any necessary technological protection tools to ensure that copyrighted works are not retained for a period longer than the class session.

Since the distance learning classroom is somewhat different than the traditional classroom, the subject of “class session” is somewhat vague here. Therefore, it is probably safe to assume that some form of time restrictions may be acceptable, such as one week, two weeks, or possibly the entire semester as long as the work is integral to the instruction that is taking place.

Once again, this aspect may be appropriately handled by the use of time-released content that is available in most LMSs. However, this would most likely have to fall under the auspices of the instructor since it would be difficult for the technology officer to control this activity.

Nonetheless, the second aspect, dissemination of content, may prove to be extremely difficult to achieve. This section requires that the technology officer prevent “unauthorized further dissemination of the work in accessible form by such recipients to others” (TEACH Act, 2002). To achieve this would require technology that would prohibit students from downloading copyrighted materials from the online courseroom due to the fact that once the digital file is off the system there is no way to monitor or control its distribution.

Technological protection measures. In delivering content through digital transmissions that may reside on other systems, institutions may not “engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or unauthorized further dissemination” (TEACH Act, 2002).

In most cases, institutions will experience this with regards to providing access to articles that reside on electronic databases that are subscribed to by the college or university. Gasaway (2005) recommended that institutions should examine their contracts with database providers to see if link creation is permissible (p. 2). If it is not, then negotiations to allow this should take place when it is time to renew such licenses.

Limits for copies. With respect to copies, “no governmental body or accredited nonprofit institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of digital transmission” (TEACH Act, 2002). It is further stated that no copyrighted materials shall be stored or maintained on the system except for those that are delivered to legal recipients. Once again, the time frame for retention is determined by a period of time that “is reasonably necessary to facilitate the transmissions for which it was made” (TEACH Act).

Additionally, §112(f) of title 17, or ephemeral recordings, has been amended to allow for the copying of phonorecords or digital works in accordance with §110(2) if the institution retains the copies and no further copies are made or distributed. In essence, the institution can use copies made for a limited time, and then store them for future use as long as it meets the requirements of the new Act.

Furthermore, it is now acceptable to create copies of analog works if no digital copy exists of the work. Even then, the use must be done within the limits that have been established through section 110(2).

Finally, an institution is now within its limits for copying if “the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2)” (TEACH Act, 2002).

Online Instructors and the TEACH Act

As stated previously, the intention of the TEACH Act was to promote similar opportunities for online and distance education classrooms with respect to certain performances and displays that were already acceptable in traditional classrooms. Dames (2005) stated that “the Act offers several improvements over previous versions of §110(2), including the display and performance of nearly all types of copyrighted works; expanding the number of locations to which the copyrighted works can be transmitted” (p. 27). Even though a major focus revolves around content, this expansion of delivery locations (Ludlow, 2003) provides an important extension for distance learning as most students are off-campus when they receive delivery of instruction.

Nonetheless, when looking at the responsibilities that are directed to faculty members, content appears to be the most important issue to be addressed. The following sections will examine the issue of content from the perspective of allowances and exceptions.

Content allowances. Even though the Copyright Act of 1976 allowed for displays of any type of work (within reason) in the traditional classroom, it excluded many dramatic works, audiovisual materials, and sound recordings from being used in the online classroom (Crews, 2003). Through the TEACH Act, Crews and Dames (2005) list the works available for use as being expanded to the following items:

1. Performances of non-dramatic literary works;
2. Performances of non-dramatic musical works;
3. Performances of any other work (including dramatic works) within reason; and
4. Display a work in an amount similar to the traditional classroom.

The key differences in this list as they pertain to distance education exist in numbers three and four. Number three finally allows for the use of dramatic works within the scope of §110(2); the instructor should refer to the fair use guidelines (Enghagen, 2005b) when using these types of works. Finally, number four establishes the parallel between traditional and distance classrooms.

Even though these new allowances appear to be beneficial, they are not always viewed as totally equal to the traditional classroom. This is due to the fact that traditional and distance classrooms are often very different in how they are conducted. Obviously, students involved in distance education do not meet in a physical location as do traditional students. Therefore, considerations must be made when trying to establish parallels between these two settings.

Content exceptions. One concern of distance educators occurs in §110(2)(A). This section states, “the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of the class session...” (TEACH Act, 2002). In theory, this “mediated instruction” would appear to be problematic in the online arena; however, Dames (2005) explained that instructors do not really have to be online during the same period of time as the rest of the class. They would, however, need to be in a position to post the material when students need it and more importantly, remove it within a reasonable amount of time after the students no longer need it” (§13).

Furthermore, §110(2)(B) requires that “the performance or display is directly related and of material assistance to the teaching content of the transmission” (TEACH Act, 2002). Therefore, in order for content to be le-

gally used, it must be directly related to the lesson that is taking place during the period of time that is defined for that specific unit of study. Works that are specifically marketed for use in the digital environment are excluded from use as this would inhibit the commercial value.

Finally, §110(2)(C)(i) requires that “the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to students officially enrolled in the course for which the transmission is made” (TEACH Act, 2002). As mentioned previously, this is also a responsibility of the Technology Officer; instructors must also ensure that the materials distributed through their online courses only reach the intended students.

RECOMMENDATIONS FOR COPYRIGHT COMPLIANCE FOR ONLINE EDUCATORS

When asking instructors about what types of materials they are allowed to use in their classrooms, they will probably provide a multitude of responses that range from examples of compliance to beliefs of “free use” (Copyright Clearance Center, 2005). One reason for this may exist in the fact that copyright law appears to be written in shades of “grey” rather than “black and white.” This allows for different interpretations and confusion about what is actually permissible when considering the use of copyrighted materials.

Therefore, the following section provides a series of recommendations for first time online instructors. These guidelines are in no way to be interpreted as legal advice, but are provided as suggestions for assisting instructors in the attempt to achieve copyright compliance in their online courses.

Recommendation 1: Examine the Institution’s Intellectual Property Agreement

Recommendation 1 does not necessarily pertain to the TEACH Act, but Intellectual Property Law is the overarching body for copyright and is important from the standpoint of instructors so it will be mentioned first. Before beginning to design or build a course, instructors should investigate the nature of the intellectual property agreement that exists at their institution.

Some institutions grant ownership of the course to instructors whereas other institutions may make an ownership claim to the course. Some instructors may agree to a contract that is considered work for hire from the begin-

ning and understand up front that the finished product's ownership resides with the institution.

Either way, it is wise for instructors to understand their role in this endeavor and identify who will actually lay claim to the finished work. If instructors do not own the rights to their online course, they will not legally be able to archive it and take it with them to another institution. Instructors should find out before beginning their labors.

Recommendation 2: Identify if the Institution is TEACH Compliant

It is important to remember that the TEACH Act applies to institutions that have met the expectations described in that legislation. With that in mind, before starting to plan and develop online courses based upon these revised guidelines, instructors should check with administrative and technology officers at their institution to ensure that compliance has been achieved. If compliance has yet to be achieved, instructors will not be able to use the TEACH Act exemptions.

Recommendation 3: Create Original Content

Remember that copyright protects original works of authorship or the expression of an idea, not the idea itself. Therefore, things such as “facts, scientific and mathematical principles, theorems and formulas; research methodologies; statistical techniques; theories; titles; phrases; and slogans are not protected by copyright law” (Enghagen, 2005a, p. 7). If possible, instructors should use the concepts of their disciplines and create their own expressions. If instructors choose to do this, they should remember to insert a copyright statement on their own original work even though it is no longer required for protection (Gale, 2002, p. 80). Copyright begins at the moment the work is fixed in a tangible medium (Diotalevi, 1998).

Moreover, Gale (2002) suggested that “if you create something that generates income, whether it is a web-based course or a workbook, register it” (p. 79). Registering a work is rather simple and can be done online. A fee is usually required for the registration process. Nonetheless, if instructors ever find themselves in a dispute over their content, having the work registered will prove to be advantageous.

Recommendation 4: Utilize Works in the Public Domain

Works that are in the public domain are available for use whether in the traditional or online environment. A work qualifies for public domain in three ways: (a) expiration of copyright, (b) ineligible for protection, or (c) placed by the owner in the public domain.

Currently, the period of copyright protection is quite lengthy. Due to the Sonny Bono Copyright Term Extension Act of 1998 (CTEA, 1998, §102), the duration of a copyright now stands at life of the author plus an additional 70 years and 95 years for corporations (Enghagen, 2005a, p. 10; Spinello, 2002, p. 163). Therefore, works that are created within an instructor's lifetime will probably not enter the public domain unless the author purposely places the work there or it is ineligible because it has been created by a government agency.

To complicate matters, different rules exist for works that were created prior to the enactment of CTEA; therefore Table 1 (Hirtle, 2004) illustrates the term limitations for all works and provides explanation as to when they are eligible for entrance into the public domain.

Nonetheless, there are many websites available to assist instructors in finding materials that are currently in the public domain. Before using the content, it is recommended that instructors check to make sure the site is reputable. Project Gutenberg, <http://www.gutenberg.org/>, is just one example of a reputable site that provides instructors with free access to over 16,000 e-books.

Table 1
Term Limitations of Copyrighted Works

Type of Work	Copyright Term
1. Unpublished Works	
2. Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	Life of the author + 70 years 120 years from date of creation
3. Unpublished works created before 1978 that were published before 1 January 2003	Life of the author + 70 years or 31 December 2047, whichever is greater
4. Unpublished works created before 1978 that were published after 31 December 2002	Life of the author + 70 years
5. Unpublished works when the death date of the author is not known	120 years from date of creation

Recommendation 5: Utilize Fair Use and Established Guidelines

Fortunately, the revisions that were created by the TEACH Act left the concept of fair use untouched (Harper, 2002). Congress realized that authors and publishers needed the ability to generate a profit from their work; however, they also realized that this protection required exceptions for the public good. Therefore, “the fair use exemptions permit public access by allowing limited use of copyrighted works for teaching, criticism, comment, news reporting, scholarship, or research without requiring the permission of or payment to the copyright owner” (Enghagen, 2005a, p. 9).

There are four basic requirements that need to be adhered to when attempting to utilize fair use (17 U.S.C. §107). Section 107 of U.S. Copyright

Law states the limitations on exclusive rights as follows:

1. The purpose and character of the use, including whether such use is of a commercial or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work (§71).

Even though it is beneficial for instructors that fair use exists, the practice of fair use remains a grey area and is often interpreted much too broadly (Boettcher & Conrad, 1999). When attempting to utilize fair use in online courses, it may be beneficial to examine one of the many fair use guidelines that exist on the Internet. Table 2 illustrates some of the guidelines that have been generally agreed upon for educational use. The key word here is “guidelines” due to the fact that these items are purely suggestions. In the end, the only way for an instructor to determine if they are in violation of fair use is through the judicial system.

Recommendation 6: Obtain Permission

Considering that a court is the final avenue for resolution of disputes, instructors should most likely also consider requesting permission for use from the author of the protected work. If this consideration is given, sometimes authors will grant permission for use of their works for educational purposes as long as due credit and limitations are followed. If the creator’s contact information cannot be obtained, instructors should pursue permission through the publisher (Carter, 1996). If permission is not granted, an instructor’s final option may be to pay royalties for the use of the desired work. However, in the pursuit of getting permissions, it may be advantageous for the institution to appoint someone to assist faculty in gaining desired permissions (Harper, 2000).

Nonetheless, illegal use of copyrighted works can be quite costly. Currently the fine for a single infraction can range from \$750 to \$150,000 (Foster, 2004). If there are multiple infractions, the damages are multiplied as well. For example, in 2004 Elsevier, John Wiley & Sons, Pearson Education, Princeton University Press, Sage Publications, and the University of Chicago Press sued Abel’s Copies and Speedway Copying for the illegal

duplication of course materials, suggesting a total of 57 infractions. When added up, the total possible damages that could be awarded amounted to a staggering \$8.5 million (Foster).

It is now possible for the sitting judge in a case to reduce the amount of the award based upon the nature of the infraction and the efforts made for compliance. Therefore, it is recommended that instructors document their efforts to obtain permission for copyrighted materials. Claiming ignorance is not acknowledged as an acceptable defense.

Table 2
Fair Use Guidelines for Media Use

Type of Media	Suggested Acceptable Use
1. Motion Media	10 percent or 3 minutes, whichever is less.
2. Music	10 percent, but no more than 30 seconds.
3. Text	10 percent or 1,000 words, whichever is less.
4. Illustrations/Photographs	Entire illustration/photograph, no more than 5 images by one artist. Collective work, 10 percent or 15 images.
5. Numeric Data Sets	10 percent or 2,500 fields or cell entries, whichever is less.

Recommendation 7: Explore Using Legal Course Packs

Since the TEACH Act prohibits the distribution of supplemental materials, course texts, or materials specifically designed for distance education that could be purchased by students, instructors may choose to require students to purchase electronic course packs. However, there have been many lawsuits that address the illegal creation of course packs without permissions or the paying of royalties to the author.

Nonetheless, reputable companies, such as XanEdu, exist and already possess permissions for distribution of copyrighted works. Even if XanEdu fails to currently hold the permission for a work, they will attempt to acquire the permission for instructors and insert the items into the final course pack. In the end, the students purchase the works electronically and may now legally use the work for their course.

Recommendation 8: Electronic Reserve and the Library

Since faculty and students are increasingly seeking materials in digital formats (Gassaway, 2005), instructors should explore if their institution's library makes use of an electronic reserve system. Considering the growth of online and distance education courses, e-reserves may play an integral role in content delivery in future classrooms.

It is important to understand that fair use guidelines still pertain to the use of digital content; it should also be noted that it is extremely important that instructors ensure that the content is password protected and only for the use of their students as part of an integral planned activity that focuses on course specific content.

As a rule of thumb, instructors may use a work for one term; if the work is to be used in any subsequent terms, permission should be sought before use (Gasaway, 2005).

Recommendation 9: Copyright Notification

As explained in §110(2)(D)(i), the institution is responsible for providing notice to students that materials in the course may be subject to copyright considerations. Therefore, it is recommended that instructors post an announcement to this effect somewhere in the courseroom. It would also be advantageous to provide links to websites that further explain the conditions that are set forth in copyright law. Not only is this required by the TEACH Act, it will demonstrate that instructors are attempting to do whatever possible to be in compliance with copyright expectations.

Recommendation 10: Time-Released Content

Considering that copyrighted content should only be made available during the period of time in which it supports mediated instruction, instructors should consider practicing time-releasing their content. If the institution uses an LMS, such as Blackboard or WebCT, then this is accomplished rather easily. However, if releasing content in another way, it is recommended that instructors take care to remove the content at the appropriate time.

Recommendation 11: Seek Guidance

All instructors need to do is read a few pages of copyright law and they will quickly see that it can become quite confusing. Therefore, it is recommended that whenever instructors are unsure if they are in compliance, ask for assistance. Begin by discussing the desired use with a colleague or administrator; if instructors are still unclear, they should inquire about speaking to the college or university legal counsel. Most universities have access to legal representation for matters such as this and it would be wise to make them available to employees that are attempting to comply.

Remember that instructors may be liable for infractions even if they do not know that they are in error. The fines will be reduced drastically for those that have made sufficient attempts to comply.

Recommendation 12: Stay Current with Copyright Regulations

As mentioned at the beginning of this article, copyright law has been debated and changed for many centuries. It is wise to check the U.S. Copyright site online for any additional changes in the law (Gale, 2002, p. 81). This may benefit instructors by identifying new limitations, or changes that will allow them to gain greater access to desired works.

SUMMARY

Copyright law is an important part of our culture and society. So important, that our founding fathers clearly defined its necessity in Article I, Section 8, Clause 8 of the Constitution of the United States of America. It creates an important balance between the needs and concerns of authors as well as the need for public access to original works.

The rapid development of new technologies over the years has precipitated the need for evaluation and revision from time-to-time. With the recent growth and popularity of distance education, Congress was faced with the task of addressing the needs of institutions that deliver online or distance courses.

In 2002, President Bush signed into law, the Technology, Education, and Copyright Harmonization Act (TEACH). The focus of this legislation revolved around the need to provide parallel access to copyrighted materials that was already enjoyed in the traditional setting. In addressing the needs of delivering distance education, the TEACH Act mainly addresses §110(2) and §112(f) of copyright law.

Section 110(2) addresses issues related to performances; the new law allows for the transmission of nondramatic literary or musical works as well as dramatic works if in the context of fair use. Additionally, §110(2) establishes that distance education should be able to use the same works that have been available for traditional instructors.

Nonetheless, to enjoy the extensions provided by the TEACH Act, institutions must comply with specific requirements set forth in TEACH. The law specifies that the institution must be an accredited body and provide instruction to faculty, staff, and students with respect to copyright compliance. Various technological measures need to be implemented, such as password protection and technological protection measures that prohibit the unlawful distribution of copyrighted course materials. Furthermore, content delivered by instructors must be an integral part of the learning experience and be conducted as part of a mediated experience.

Moreover, it is important that instructors of distance education be aware of the importance of copyright compliance. The founding fathers of our country understood the importance of the balance between the needs of authors and the right of the public to gain access to their creative works. Therefore, it is important to respect the law that provides this important protection.

Finally, copyright infringement is unethical and can lead to fines that are quite expensive; therefore, it is recommended that first-time instructors explore the recommendations of this article in an effort to understand and begin implementation of copyright law including those extensions and limitations that have been created through the Technology, Education, and Copyright Harmonization Act.

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