

## What is the TEACH Act?

**Answer:** The TEACH Act, enacted in November of 2002, redefines the terms and conditions on which accredited, nonprofit educational institutions in the U.S. may use copyright protected materials in distance education—including on websites and by other digital means—without permission from the copyright owner and without payment of royalties. This law however, also carries obligations that have privacy and security implications such as restricting to whom the copyrighted data is transmitted and controlling the retransmission of such information.

The TEACH Act modifies the Copyright Act and permits the uses outlined below as long as educators comply with the requirements of the law. The rights of use are also often limited to certain works, in limited portions, and only under rigorously defined conditions. The TEACH Act:

- Permits the display and performance of nearly all types of works (i.e., performances of nondramatic literary works; nondramatic musical works; any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; and displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session). A few narrow classes of works remain excluded (i.e., works that are marketed "primarily for performance or display as part of mediated instructional activities transmitted via digital networks"; and performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act, if the educational institution "knew or had reason to believe" that they were not lawfully made and acquired). The Act also restricts the uses of some types of works subject to quantity limitations.
- Permits the transmission of content to locations other than classrooms and other similar location. Educational institutions may now reach students through distance education at any location.
- Permits educational institutions to record and retain copies of the distance-education transmission, even if it includes copyrighted content owned by others. The law explicitly allows retention of the content and student access for a brief period of time, and it permits copying and storage that is incidental or necessary to the technical aspects of digital transmission systems.
- Permits Digitizing of analog works. The TEACH Act includes a prohibition against the conversion of materials from analog into digital formats, except under the following circumstance:
  - The amount that may be converted is limited to the amount of

appropriate works that may be performed or displayed, pursuant to the revised Section 110(2); and

- A digital version of the work is not "available to the institution," or a digital version is available, but it is secured behind technological protection measures that prevent its availability for performing or displaying in the distance-education program consistent with Section 110(2).

The law also calls for institutional policymaking, implementation of technological systems to control transmission, and the distribution of copyright information. TEACH requires the use of technology, to the extent feasible, to reasonably:

- Limit access to copyrighted works to students currently enrolled in the class.
- Limit access only for the time period necessary to complete the class session.
- Prevent further copying of copyrighted works.
- Prevent further distribution of copyrighted works.

The law permits use of only certain copyrighted materials, so it is critical that faculty understand the limits of the law. The Act mandates the instructor's participation in the planning and conduct of the distance education program and the educational experience as transmitted. An instructor using materials as allowed in the TEACH Act must adhere to the following requirements:

- The performance or display "is made by, at the direction of, or under the actual supervision of an instructor";
- The materials are transmitted "as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities" of the educational institution; and
- The copyrighted materials are "directly related and of material assistance to the teaching content of the transmission."

Additionally, the statute directs that performances and displays, involving a "digital transmission," must be in the context of "mediated instructional activities." This language means that the uses of materials in the program must be "an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting." In the same provision, the statute specifies that "mediated instructional activities" do not

encompass uses of textbooks and other materials "which are typically purchased or acquired by the students."

To see a summary of copyright requirements under the Teach Act go to <http://www.copyright.com/media/pdfs/CR-Teach-Act.pdf>