



University System of Georgia
Creating A More Educated Georgia

TEACH Act

For more information regarding requirements of the TEACH Act, please visit the University System of Georgia's "[Guide to the TEACH Act](#)."



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Guide to the TEACH Act

For general questions about copyright and fair use, see the [University System of Georgia Copyright Policy](#)

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Introduction

The Technology, Education and Copyright Harmonization (TEACH) Act was enacted in November 2002 as an amendment to the Copyright Act of 1976. Found in section 110(2) of the Act, it covers distance education as well as face to face teaching which has an online, web enhanced, transmitted or broadcast component. It exempts from liability the transmission, including over a digital network, of a performance or display of a copyrighted work by an accredited non-profit educational institution to students officially enrolled in a course or a government body to officers or employees of government as a part of their official duties or employment. *It does not cover making textual materials available to students.* The performance or display must be:

- Part of systematic mediated instructional activity.
- At the direction of or under the actual supervision of the instructor.
- An integral part of a class session.

All copies that are transmitted must be lawfully made copies. The performance and display may be received anywhere as long as the following technological conditions are met. The institution:

- Must apply technological measures that reasonably prevent recipients from retaining works beyond the class session and further distributing them, and
- May not interfere with technological protections taken by copyright owners.

The TEACH Act places considerable responsibilities on educational institutions that wish to take advantage of the exemption it offers. The greater freedoms granted to instructors are balanced with increased responsibility for the management of distance education. It does not, however, modify the previous standards for the fair use of copyrighted materials.

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Providing Online Access to Materials Performed or Displayed

The following guidelines apply to the performance or display of electronic materials placed within courseware maintained by the institution.

Limit Access

1. Authentication

To comply with the TEACH Act's provisions, the institution must use secure authentication technology to restrict access to copyrighted materials placed within a course. When properly maintained, official courseware packages (such as WebCT) that are restricted to students in the class meet the requirements of the TEACH Act. Performances and displays of copyrighted materials, other than those which the individual instructor created, should not be available on a faculty member's webpage

unless:

- Permission from the copyright holder has been obtained.
- The institution has a license that permits such use of the work.
- Course webpages are password protected to students in the class and meet all of the TEACH Act requirements.

2. Current Enrollment

Access to performances and displays of copyrighted materials must be limited to students currently enrolled in the course.

3. Time Limits

Copyrighted electronic materials should be available for a prescribed time period only, normally a single class session. This can be achieved through control of the content via password or time limits applied to the internal hyperlink or folder access.

4. Amounts: Displays

Display of copyrighted works such as graphics, photographs, short poems, etc., in the online classroom must be comparable to that typically displayed in a face-to-face classroom.

5. Amounts: Performances

How much of copyrighted work may be performed without obtaining a license to do so depends on the type of work. The following amounts may be performed:

- Entire nondramatic literary and musical works.
- Other works such as audiovisual works and motion pictures — only a limited and reasonable portion may be performed.
- No portion of a work produced solely for use in online instruction.

While entire works may not be performed without a license, a reasonable portion is judged by the length of the copyrighted work, the instructor's purpose, level of the course, etc.

6. Download Controls

Reasonable measures must be taken to prevent retention and / or dissemination of electronic works for longer than the prescribed time period, generally a single class session. Copyrighted images and graphics should be made available in a format limiting printing and saving controls. Copyrighted electronic materials such as video and audio should be streamed to avoid the downloading and saving of the file.

Requirements to Use a Work

The work performed or displayed must be:

- An integral part of the class session as determined by the instructor.
- Part of a systematic mediated instructional activity.
- Directly related and of material assistance to the content of the course.

The work must NOT be:

- Part of a work marketed specifically for online education.
- Already available through alternative sources in a digital format.
- Unlawfully or suspected unlawfully made copies of works covered by U.S. copyright law.
- Over the limits permitted as a fair use.

Notices

Faculty must place the following notice prominently within each course site:

"The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated."

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Additional Information

For additional information on the TEACH Act see:

- <http://www.ala.org/washoff/teach.html>
- <http://www.lib.ncsu.edu/scc/legislative/teachkit/>
- <http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>

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Frequently Asked Questions

General

How does the TEACH Act apply to foreign owned materials?

Remember that the TEACH Act is just an amendment to the Copyright Act of 1976, so the real question is how the U.S. copyright law applies to foreign owned materials. Section 104(b)(1)-(2) of the Act states that if the author was a domiciliary of a country with which the U.S. has a copyright treaty (by far most of the world), the foreign work gets the same protection that works produced in this country receive.

Where do the DMCA and TEACH Act conflict, and how should those conflicts be resolved?

There really is no conflict between these two amendments. TEACH is a separate exemption to copyright infringement for transmitted instruction; it was a complete substitution for the existing section 110(2). The Digital Millennium Copyright Act (DMCA) amended several existing sections of the Act and added some new ones, but there is no overlap with TEACH.

It is so easy to update/remove the copyright notice on web materials, that it seems that innocent infringement can never be a possibility. So, is the TEACH act unfairly biased in favor of copyright holders?

It is said by those who work on behalf of faculty and librarians in the copyright arena that the entire Copyright Act is biased in favor of copyright holders. Some copyright owners feel otherwise, however.

How does the TEACH act apply to music downloaded from the web to be played at school's sporting events?

Not at all. TEACH applies only to mediated instruction – a sporting event is hardly instruction. The real question is whether the music downloaded means a sound recording or sheet music.

There are licenses for universities from ASCAP and BMI that provide coverage for live music performances, but the licenses do not cover downloading music from the web whether sheet music or a sound recording. Downloading and playing the sound recording at sporting events would actually require two separate licenses: one for the downloading and one for the performance of the sound recordings.

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Video, Audio & Slides

Are video works covered by ASCAP, BMI or other similar licensing agency?

Unfortunately, no. There are other licensing entities that cover certain types of videos. The Motion Picture Licensing Corporation license movies, see <http://www.mplc.com>. Movie Licensing U.S.A. offers a blanket license for K-12, but this is for performance only and not for digitizing or using on a website. See <http://www.movlic.com>. Clipland offers a license for a variety of video content that can be used on websites; see http://www.clipland.net/About/ce_Content_Licensing.html. DVcuts.com also offers a large number of short video clips under a license. See <http://www.dvcuts.com>. C-SPAN provides an online license for its video content, but the license does not include streaming on the Internet. See <http://www.c-spanarchives.org/lsinfo.php>. Many television networks directly license use of their content.

Faculty have requested that Instructional Technology staff excerpt materials available only on DVDs purchased by them that are encrypted with CSS. IT staff are technically capable of fulfilling these requests, but are they legally allowed to do this type of work for the faculty? The difficulty is that excerpting a DVD can be done at a much lower expense to the university than if VHS is the source.

True, excerpting from a DVD is easier, but the TEACH Act states that an educational institution may not circumvent technological controls that a copyright owner applies to a work. Excerpting a DVD for digital transmission interferes with such controls, and thus violates the Act. The legislative history even says that using a videotape to digitize a portion of a movie is permitted while using a DVD of the same work is not.

If the excerpt is to be used for face-to-face teaching, then the anti-circumvention provision of the Copyright Act applies. Section 1201 does not permit use of any decryption device for an excerpt or for an entire DVD. Using a VHS tape for the same purpose involves no circumvention of technological access controls.

Can one make copies of audio, video or text CD's as a backup?

No. There is no provision in the Act to make copies as backup copies with the one exception under section 117 of computer programs.

Can students make copies of videos a professor has placed on library reserve?

Copying an entire video would be infringement. However, it is the student's problem and not the library's or the professor's unless the instructor has encouraged the students to duplicate the video. When placing the video on reserve it is intended that the student either view it in the library or take it home for overnight viewing, depending on the reserve policies of that library.

Is it permissible to stream a movie clip from one semester to the next?

Oddly enough, yes. Under the TEACH Act, performances of a reasonable portion of a video are not restricted to one-semester use while the reproduction and distribution of print material under the Guidelines on Multiple Copying for Classroom is restricted to one semester use without permission. This is because these materials are reproduced in multiple copies. The difference is that the movie clip cannot be downloaded by students and is only performed and not duplicated by or for students.

What about making digital copies of off-air broadcasting? Is this handled the same way as videotaping a broadcast is now?

The TEACH Act is simply silent about off-the-air copying. Therefore, one should follow the Videotaping Guidelines.

When one obtains instructor's slides, may a teacher put them on a website even if the website is not password protected?

It is not clear from the question what the source of the slides might be. Are these slides provided by the publisher to accompany a textbook? If so, then the instructor should consult with the publisher to determine if slides are provided to be uploaded onto a website and whether permission is needed if the website is not password protected. If the slides are provided from the library's collection or found on the web, then the website should be password protected.

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Distributing Print Materials

Is there likely to be future legislation relating to e-reserves?

It certainly is possible, but it appears more likely that there will be litigation involving e-reserves rather than legislation. This is mere speculation, however.

Is a teacher allowed to print anything from the web and make copies to distribute to his or her students?

Yes, within the boundaries of fair use and the Guidelines on Multiple Copying for Classroom Use. There are word and other limitations within the guidelines as well as the one-term restriction on use. Another alternative is simply to provide the students with a link to materials on the web which entirely avoids printing and distribution by the teacher.

Is there a grandfathering clause with respect to items that one has used for a number of years?

Unfortunately, no, and the teacher should seek permission now. In doing so, however, it is not necessary to admit that the instructor has used the same material for a number of years.

What issues are there for students printing material from a password protected course?

None. The real issues involve whether and under what conditions the teacher may make the material available to the students so that it may be downloaded or printed. If this is done correctly, then when a student either prints or downloads the material, it is not infringement.

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Online Courses & Portions of Courses

Is it fair use for one instructor to take another's course created on the university facilities and adapt or use it?

This question does not specify who owns the copyright. If the university owns the copyright, then the institution may permit any uses it wants. If the first instructor owns the copyright, then taking the course is infringement. In either instance, it may be plagiarism if the second instructor fails to credit the first teacher.

Many websites allow the download of Adobe documents to the reader. Would the use of these documents as part of an online course be infringement?

The downloading of these pdf documents has nothing to do with whether they may be used as a part of a course with impunity. Pdf format is one format in which documents may be made available for reading on the web. Use of pdf does not carry with it any greater or lesser rights to use the material than it if is an html document. Follow fair use, the Guidelines on Multiple Copying for Classroom Use, etc., to determine whether including a web document is permissible and under what conditions.

Can you be more specific about the amount of time material may be used in a password protected course?

It depends on what the material is. If it is text material, then the Guidelines on Multiple Copying for Classroom Use apply, and they relate to use for one term only without permission. If the material is a graphic work, a sound recording, movie or other video performance, then the TEACH Act applies, and it has no time limitation although it has many other restrictions such as the portion that may be used, etc.

Is it not possible for corporate entities to undermine fair use by simply cataloging their holdings for sale as an educational product?

Not really. Under the Teach Act, the only material for which even a reasonable portion may not be performed for instruction without permission is not an "educational product" but is material that is developed and offered only for mediated instructional activity that is transmitted via digital networks. This really means modules created and offered by publishers only for online instruction.

How are institutions responding to the TEACH Act considering it is not possible at this time to comply with the technical requirements? Streaming does not apply to images and coding to disable right click will not work on Macs and will not disable using keys to save or copy.

Institutions are doing the best job they can to comply within the bounds of what is reasonable at this time. Streaming and coding to disable right click is what is reasonable now. It is likely, however, that other technologies will be developed that will make it easier to comply that at present. All an institution is required to do is to make reasonable efforts to comply, not make extraordinary efforts.

How important is the use of a Course Management System such as WebCT in leveraging the advantages of TEACH?

Really not at all. Course management software facilitates compliance by making it easy to password protect the course materials, however, it also imposes an organizational structure for online courses and components of face-to-face courses, but this has nothing to do with the exemption offered by TEACH.

Is an instructor allowed to link to anything on the Web for educational purposes?

Yes, one may link to any non-infringing material. However, it is risky to link to websites that contain infringing materials – those that are obviously infringing such as a website containing the DeCSS code, copies of current motion pictures, etc.

Is it infringement to place CD multimedia produced by publishers for classroom use onto the Web?

It depends on the publisher. It may produce the CD with the intention that it be placed on the web for students; or it may have produced the CD only for performance in the classroom. Thus, one should consult the publisher and seek a license to make more than a reasonable portion of the work available on the web.

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