

One important component of program management is understanding copyright law and guidelines for use in distance education.



Fair Use Guidelines

- **Established in 1976**
- **Copyrighted materials may be used without express permission of the copyright holder under certain conditions**

The first copyright legislation in the United States was enacted by Congress in 1790. The law, Title 17 of the U.S. Code, has undergone several major revisions, the latest in 1976. Section 102 specifies that copyright protection subsists in original works of authorship fixed in a tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. According to Section 107, the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement.



Fair Use Guidelines

- **Section 107 has four factors**
 - **Educational use/ non-profit**
 - **Nature of copyrighted work**
 - **Excerpt or portion of work**
 - **Cannot impair marketability**

Under certain conditions is based upon four factors. 1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit education purposes, 2) The nature of the copyrighted work—nonfiction works are more likely to be considered fair use than fictional or artistic works. Published and printed works are generally favored over unpublished or audiovisual materials. 3) The amount and substantiality of the portion used in relation to the copyrighted work. The law does not provide specific limits or percentages. The case for fair use can be enhanced if no more of the published original is taken than is necessary. 4) The effect of the use upon the potential market for or value of the copyrighted work. The courts consider whether it was reasonable to expect the ultimate recipient of a reproduction to have purchased that copy or paid a licensing fee.



TEACH Act Changes (2002)

- ◆ **Expands categories of works that can be performed in DE to limited & reasonable portions**
- ◆ **Removes concept of physical classroom**
- ◆ **Allows storage of copyrighted materials on a server to permit asynchronous performances & displays**


The copyright law is in a perpetual state of change. The law was amended by Congress a total of 46 times between 1976 and the end of 2000. The Digital Millennium Copyright Act had far reaching implications for distance education. This legislation focused on amending section 110 to extend the exemptions granted in face-to-face instructional situations to distance learning. This caused the passage of the Technology, Education and Copyright Harmonization (TEACH Act). The TEACH Act makes five basic changes: 1) It expands the categories of works that can be performed in distance education beyond non dramatic literary and musical works to reasonable and limited portions of other works, with the exception of works produced primarily for the education market. 2) It removes the concept of the physical classroom and recognizes that a student should be able to access the digital content of a course wherever he or she has access to a computer. 3) It allows storage of copyrighted materials on a server to permit asynchronous performances and displays.



TEACH Act Changes (cont.)

- ◆ **Permits institutions to digitize works to use in distance education**
- ◆ **Clarifies that participants in DE courses are not liable for infringement**

4) It permits institutions to digitize works to use in distance education when digital versions do not already exist and when the digital work is not subject to technological protection measures that prevent its use. And 5) It clarifies that participants in authorized distance education courses and programs are not liable for infringement for transient or temporary reproductions that occur through the automatic technical process of digital transmission.



TEACH Act

- Part of mediated instruction under the supervision of an instructor
- Limits portions of works
- Restricts displays to amounts in live classroom
- Limits receipt of materials to enrolled students
- Requires application of technology protection measures
- Requires lawfully made or acquired copies of works

Additional requirements safeguard against unauthorized and inappropriate use of copyrighted materials. It adds a requirement that performances and displays be part of mediated instruction under the supervision of an instructor, limits portions of works to be performed, other than non-dramatic literary and musical works, to “reasonable and limited portions,” restricts displays to amounts typically displayed in a live classroom setting, limits its receipt of materials to enrolled students to the extent technologically necessary, requires the educational institution apply technological protection measures that reasonably prevent retention of the work for longer than is necessary and prevent downstream copying or dissemination, and requires performances and displays be given by means of lawfully made or acquired copies of the works.



Piracy Deterrence and Education Act (2003)

- **To enhance criminal enforcement of the copyright laws, educate the public about the application of copyright law to the Internet, and clarify the authority to seize unauthorized copyrighted works.**

Another proposed change is the Piracy Deterrence and Education Act (H.R. 2517) that directs the FBI to develop methods of deterring copyright violation through use of peer-to-peer networks. It also directs the Justice Department to develop programs to educate the American public on why copyright violation is a problem. It will be interesting to see how this will play out and what new legislation may be in store for us.



Important Reminders

- **If over electronic network, obtain permission for copyrighted works incorporated in the program**
- **Always credit the sources**

The main thing to remember is to obtain permission to use copyrighted works and always credit your sources that you use within the fair use guidelines. It is also a good idea to let people know when you are linking to their materials, out of common courtesy. For more information, see the selected links and fair use scenarios.