TEACH Act: Best Practices and Guidelines for the University of Cincinnati

The University of Cincinnati is committed to compliance with the requirements of the TEACH Act while providing faculty, staff, and students access to resources for classroom and distance learning. This webpage is meant to be an overview of the general precepts and application of the law.

The general areas of discussion will be:

1. Online streaming of videos and performance in learning management systems
2. Distance learning and the TEACH Act
3. Digital rights management and streaming
4. Accessibility and other permitted exceptions
5. The classroom and the TEACH Act
6. TEACH Act and Fair Use
7. Determining whether use of materials are permitted
8. What resources are available if the materials are not covered by the TEACH Act?
9. Contact Directory

Overview:

Copyright law provides educators with a separate set of rights in addition to fair use, to display (show) and perform (show or play) others’ works in the classroom. These rights are in Section 110(1) of the Copyright Act and apply to any work, regardless of the medium.

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 was designed to modernize and expand the ability of educators to use and display copyrighted works in the classroom and in digital online instruction. The TEACH Act expands the scope of educators’ rights to perform and display works and to make the copies integral to such performances and displays for digital distance education, bringing the rights into alignment with those we have in face-to-face teaching. Given the complexity of the law, reticence of instructors to learn the requirements stated in the act, and the rapidly changing technologies used by institutions in instruction; implementation of the policy in higher education has been slow and uneven.

This document is designed to give UC faculty, staff, and students a set of best practices and general information about what is permissible under the law. It also will address practical considerations for determining how to make instructional activities compliant with the conditions of the TEACH Act. However, this
is an informational bulletin and not mandated policy, nor is it meant to be a substitute for legal advice. For further information or help with specific questions, please contact the Office of Scholarly Communications at 513-556-2511 or mark.konecny@uc.edu.

General Description

Given the rapid advances in the instructional use of online content, the TEACH Act created certain rules for special digital uses, such as online distance learning and course management systems. While most exceptions to the use of copyrighted material in a non-profit educational setting are covered by fair use, 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 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 access to copyright-protected material for distance education, the TEACH Act requires that the academic institution meet 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, nonprofit 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 can be for 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.
• 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.

The TEACH Act does not allow posting or digitization of certain specific items:
• Electronic reserves or course packs
• Material provided through interlibrary loan
• Textbooks or content provided under license from the author or publisher
• 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 (DRM)

The TEACH Act works with fair use exceptions and does not supersede digital licensing agreements.

Duties and requirements for instructors

While the TEACH Act allows teachers access to digital materials, it also imposes conditions and requirements for complying with the terms of the TEACH Act. For online instruction, use of digital materials must be directly related to the content of the course and must be part of “mediated instructional activities,” which means that the digital materials must be the same type of materials that an instructor uses as a part of a classroom session. Ancillary works that are viewed or listened to outside of class are not included under the exemption; therefore, readings, videos, music, and other materials that would be required for class preparation are not covered by the exception.

The TEACH Act permits digitizing analog works as long as the works are not already available in digital form. For example, VHS videos which can be purchased from a vendor cannot be digitized and streamed. Commercial works marketed for the educational market, such as electronic texts or workbooks, cannot be used under the TEACH Act exemption, and paper versions of these works cannot be digitized either.

In order to retain the protection offered by the TEACH Act, all materials used in the course must be legally obtained.

Institutional requirements established under the TEACH Act
The benefits of the TEACH Act apply only to accredited non-profit educational institutions or government bodies. Institutions must have policies regarding copyright, and must disseminate information about, and promote, copyright compliance.

Institutions must also provide notice to students that course materials may be copyright protected. Institutions should limit the online transmissions to students enrolled in the particular course to the extent technologically feasible.

The following are not infringements of copyright:

1. performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
2. except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

• the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;
• the performance or display is directly related and of material assistance to the teaching content of the transmission;
• the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or (ii) officers or employees of governmental bodies as a part of their official duties or employment.

**Distance Learning**

There are differences between what the copyright statute authorizes for face-to-face teaching and for distance education. An educator may show or perform any
material related to the curriculum, regardless of the medium in the classroom - images, music, movies, broadcasts, or even licensed streamed content. There are no limits and no permission required. Until passage of the TEACH Act, however, the instructor was not able to show these works or make them available over the internet to face-to-face students. Audiovisual works and dramatic musical works are now able to be shown in entirety.

The TEACH Act authorizes the digitization of works for use in digital distance education, but only to the extent we are authorized to use those works in Section 110(2), and so long as they are not available digitally in a format free from technological protection. So, for example, where 110(2) authorizes the use of movie clips and the available DVDs don’t permit ripping (a prerequisite to creating a digital “clip”), you can digitize those parts using an analog tape; but you are not authorized by the TEACH Act to digitize the whole movie. Fair use is almost always going to be the best source of authority for making copies in any context, but especially in conjunction with statutes like 110(2) that give us specific authorization that may not be sufficient in a particular case.

However, recent rules adopted by the Library of Congress (37 CFR Part 201) do allow circumvention of DRM for certain non-infringing uses. Despite the rights extended by the TEACH Act, fair use remains an important element of instruction because of the fact that in-classroom and distance learning activities which encompass more than the small number of materials allowed under the TEACH Act. In fact, fair use provides a broad range of electronic resources educators may wish to make available that are not specifically mentioned in the act which only covers in class performances and displays, not, for example, digital delivery of supplemental reading, viewing, or listening materials. When relying on fair use, each incidence is subject to the 4 tests. Where there is an established market for permissions, there will often be a narrower scope for fair use. Because fair use provides institutions with the tools to provide services and materials that are under copyright, but are unavailable for purchase or gaining permission from copyright holders, which is often the case with film and music, for instance.

Specific tools for instruction and video streaming at UC

Kaltura is the University of Cincinnati’s enterprise media creation tool and streaming video repository. Faculty, students and staff members have the ability to create media content for courses, assignments or tutorials with Kaltura’s stand-alone software based tool called CaptureSpace. Once the media is created, users can upload their content to the Kaltura video repository in Blackboard for course related content or through one of the nineteen college or departmental MediaSpace websites (KMS) for sharing content publicly.

The Right to Caption Instructional Video

As an institution that the receives Federal funding, the University is subject to Section 504 and 508 of the Rehabilitation Act of 1972, the Amended Americans with Disabilities Act, and the Assistive Technology Act of 2004. Together,
these statutes establish accessibility as a civil right and obligate the University to provide reasonable accommodations that offer persons with disabilities a substantially equivalent experience as individuals without disabilities. Section 508, in particular, specifically demands accessibility for electronic media including the addition of real-time synchronous captioning to instructional video.

**The Chaffee Amendment and Fair Use**

Section 121 of the Copyright Act of 1976, better known as the Chaffee Amendment, explicitly permits the reproduction and distribution of copyright work for use by the blind or other persons with disabilities. While the amendment establishes limitations on the exclusive rights of copyright holders, it does not specifically protect the captioning of electronic media. However, the US Court of Appeals for the Second Circuit expanded this provision in the Authors Guild v. HathiTrust decision. The addition of synchronous captions to instructional video makes the content accessible, thereby creating a new meaning that substantially transforms the original work. Furthermore, captions and transcripts empower students to search within the spoken content, further transforming the original work. For more information about captioning instructional video, please contact the Communication Access Team in the Disability Services Office at 513-556-6823 or dso@uc.edu

**APPENDICES**

2. The Digital Millennium Copyright Act of 1998
3. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies
4. Copyright Law of the United States
5. Copyright Guidelines for MOOCs and other Public Online Courses