

Community College of Rhode Island

**Explanation of Copyright Policies Needed under the  
Technology, Education, and Copyright Harmonization Act (TEACH) of 2002**

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Copyright law provides that owners of copyrights have the exclusive right to control the reproduction, distribution, public performance, and display of their copyrighted works. There are a limited number of exemptions from this exclusive control including the concept known as “fair use” under § 107 of the Copyright Law. Section 110 of the Copyright Law provides a statutory exemption for face-to-face teaching and for distance education. Up until 2002, the exemption for distance education was much more restricted than the exemption for face-to-face teaching.

The federal **Technology, Education, and Copyright Harmonization Act of 2002**, commonly known as the **TEACH Act**, was signed into law in November 2002 and greatly enlarged the statutory exemption under copyright law for distance education. Under the revised provisions of § 110(2) of the Copyright law in Title 17 of the United States Code, the use of copyrighted materials in real time and asynchronous digital distance education, without the need of obtaining prior permission from the copyright holders, was expanded to be similar (but not identical) to the existing law on face-to-face teaching in the classroom. The revisions provide for “the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work [e.g. dramatic literary or musical works] , or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session ....”

This expanded exemption under the TEACH Act, however, came with a number of mandatory conditions for the exemption. In other words, if the conditions specified in the statute are not followed than the statutory exemption for distance education is not available to an institution or its faculty and staff.

The conditions imposed on the educational institution by the TEACH Act are:

1. The transmission of the material can only be to “students officially enrolled in the course for which the transmission is made.”
2. The institution must “institute policies regarding copyright”
3. The institution must “provide informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the law of the United States relating to copyright
4. The institution must provide “notice to students that material used in connection with the course may be subject to copyright protection, and
5. The institution must apply “technological measures that reasonably prevent the retention of the work in accessible form by recipients...” and prevent “unauthorized further dissemination of the work in accessible form by such recipients to others”.

In a separate document are proposed policies for the Community College of Rhode Island to adopt that in my opinion will conform to the requirements of the law. In preparing these proposed policies, I have read the **Technology, Education, and Copyright Harmonization Act** itself, a report entitled **Campus Copyright Rights and Responsibilities: A Basic Guide to Policy Considerations** prepared by the Association of American Universities and other groups in December 2005, and a Congressional Research Service Report for Congress entitled **Copyright Exemptions for Distance Education: 17 U.S.C. §110(2), the Technology, Education, and Copyright Harmonization Act of 2002** dated July 6, 2006. In addition to these sources, I drew on material from the websites of Brown University and Providence College as both colleges have addressed these issues and have established websites to provide the appropriate information to the college community.

In addition to the conditions set out above, the statutory exemption for distance education does not apply to “a work produced or marketed primarily for performance or display as part of a mediated instructional activity”. Thus publishers’ materials designed for distance education cannot be used except in accordance with the permissions and the

conditions set by the publisher for electronic course packs and electronic textbooks. For both face-to-face teaching and distance education, the statutory exemption will not apply if the performance or display of a copyrighted work is given by means of a copy that is not lawfully made and acquired, and the institution or the faculty member knew or had reason to know that it was not lawfully made or acquired.

The condition set out above on copyright policies by the educational institution is not explained at all in the TEACH Act. The legislative history of the act suggests that Congress is looking for policies from educational institutions that encourage compliance by faculty, staff, and students with existing copyright laws.

Upon approval of appropriate copyright policies by the college, it will be necessary for the college to develop material for its website on copyright law similar to that maintained by Providence College and Brown University.