The TEACH Act in context

• Copyright Act (fair use codified) - 1976
• Basic Books v. Kinko’s (coursepacks) - 1991
• Digital Millennium Copyright Act (copyright protection technology) - 1998
• TEACH Act - 2002

attitudes and beliefs about copyright

1. copyright law should stimulate artists’ creativity without inhibiting the free exchange of ideas.
2. fair use generally provides sufficient legal immunity for the needs of higher education.
3. copyright protection need not be perfect - minimal private infringement is harmless.
4. infringement that is not fair use or de minimis is probably theft
forces that shaped the TEACH Act

- corporate power leveraged to influence political outcomes
- disruptive technologies
- higher education’s interest in protecting its online business models

disruptive technologies\(^1\)

<table>
<thead>
<tr>
<th>technology</th>
<th>advance</th>
<th>type</th>
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<tr>
<td>MPEG 4 compression</td>
<td>shrink x 2-3</td>
<td>sustaining</td>
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<tr>
<td>P2P networks</td>
<td>free global distribution of infringing works</td>
<td>disruptive</td>
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<tr>
<td>PVRs</td>
<td>copy TV w/o commercials</td>
<td>disruptive</td>
</tr>
<tr>
<td>high speed wireless</td>
<td>5x faster than Wi-Fi</td>
<td>sustaining</td>
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how far have we traveled in 10 years?

"Association of American University Presses believes that present copyright law does adequately protect the rights of both the creators and consumers of scholarly work, whether in print or electronic form . . . we are concerned that adequate technical solutions be found to ensure the application and enforcement of the law. We do not believe that any fundamental changes in the law itself are necessary, however, and would resist any amendments to the law that would further limit the rights of authors and publishers or . . . undermine the system of scholarly communication . . . ."
Infringement, Fair Use and the TEACH Act

When is copyright infringement not infringement at all?
- fair use
- public domain
- TEACH Act
- post-expiration

Old law . . . the original copyright act section 110(2)
- an educator could show or perform any work related to the curriculum, regardless of the medium - photos, music, movies.
- so long as it was transmitted to classroom-like settings (synchronous)
- no limits, no permissions required

TEACH Act . . .
new rights, new obligations
- conditional benefits
- institutional obligations
- centralization of online programs
**Infringement, Fair Use and the TEACH Act**

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**conditional benefits**

- expanded range of allowed works
- expanded range of receiving locations
- right to store works when incidental/necessary to the operation of digital networks
- right to digitize analog works if not available in digital format

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**expanded range of allowed works**

- entire non-dramatic literary or musical works, but excluding audiovisual works
  - poetry or short story reading - YES
  - opera, music videos, musicals - NO
- reasonable and limited portions of any other performance, including audiovisual works
- any work in amounts comparable to typical face-to-face displays, e.g. still images

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**exclusions and limitations**

- works produced or marketed for class use in the digital distance education market
- works the instructor knows or has reason to believe were not lawfully made or acquired
- textbooks, coursepacks and other materials typically purchased by students individually
Infringement, Fair Use and the TEACH Act

**TEACH Act . . . new rights, new obligations**
- conditional benefits
- institutional obligations
- online program centralization

**institution must “opt in” by meeting statutory requirements:**
1. Policymakers and legal counsel must have copyright policy and copyright education programs in place.
2. CIOs must initiate copyright protection measures on displayed materials
3. CIOs or units must be responsible for safe digital storage of copyrighted works

**1. copyright policy and programs**
- full policy treatment of copyright law
- accurate, legal information about copyright that is readily available to faculty
- importance of policy and education - vicarious liability of university for employee infringement
Infringement, Fair Use and the TEACH Act

2. copyright protection for online displayed materials
   - apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them; and
   - not interfere with technological measures taken by copyright owners that prevent retention and distribution.

3. safe digital storage
   - copies are retained only by the institution and used only as authorized by the Act
   - analog works may be digitized if no digital version of the work is available free from encryption or copy protections that would prevent the uses authorized by the Act
   - inaccessible when not being used in class

TEACH Act . . .
   new rights, new obligations
   - conditional benefits
   - institutional obligations
   - online program centralization
program centralization

- temporary storage by institution
- access restricted to enrolled students
- copy protection

TEACH Act . . .
new rights, new obligations

- conditional benefits
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a renewed appreciation for fair use?

"nothing in the TEACH Act is intended to limit or alter the scope of the fair use doctrine."
Senate Report 107-31

"when technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of this basic purpose . . . " to stimulate artistic creativity for the general public good

streamlining copyright permissions

- do it yourself -
  - use standardized forms of permission available from Office of University Counsel
- designate and train a person to handle copyright clearances
- use Office of Publication Services – 6-3567 or Gordon Flesch Co. at Library – 6-6369

desktop resources

- North Carolina State’s “The TEACH Toolkit,”
  [www.lib.ncsu.edu/scc/legislative/teachkit/background.html](http://www.lib.ncsu.edu/scc/legislative/teachkit/background.html)
- University of Texas System,
  [www.utsystem.edu/ogc/intellectualproperty/teachact.htm](http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm)
- TEACH Act comparison chart
  [www.unc.edu/~unclng/TEACH.htm](http://www.unc.edu/~unclng/TEACH.htm)

For a copy of the slides, send an email to Nancy Namowicz, namowicz@uic.edu, with “TEACH Slides” on the subject line, no message.

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