

Technology, Education and Copyright Harmonization (TEACH) ACT FAQ

The TEACH Act was enacted in November of 2002 and became a part of the Federal Copyright Act. It covers distance education and face-to-face teaching with an online, web enhanced, transmitted or broadcast component. It provides specific allowances for 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.

Does the TEACH Act allow me to transmit or make available copyrighted work to students through Belmont's learning management system (LMS)?

While the TEACH Act is designed to provide instructors with similar opportunities to show and perform copyrighted works through digital transmission as is allowed during face-to-face classroom teaching, there are some additional restrictions placed on digital uses. Copyrighted electronic materials must be limited to an appropriate portion of the work, the work may only be available to the students for a limited time, and appropriate technological protections must be applied to all digital copies.

Can the TEACH Act apply to homework assignments or is it limited to in-class activities?

The TEACH Act applies to any activity that can be considered an integral part of a class session, under the control or supervision of the instructor, and analogous to a use that would take place in a classroom. The electronic distribution of a work as a homework assignment would be more analogous to a course pack rather than an in-class activity, therefore the TEACH Act would likely not allow a digital transmission as part of a homework assignment.

If the TEACH Act allows the use of a copyrighted work, what portion of the work can I transmit or make available through the LMS to students?

Nondramatic literary and musical works: the entire work.

Audiovisual works, dramatic works, and motion pictures: a reasonable and limited portion of the work.

Graphics, photographs, short poems, etc.: an amount comparable to that typically displayed in a face-to-face classroom.

What is a reasonable and limited portion of a performance of an audiovisual or dramatic work?

The portion of the performance should not substitute for entertainment or for purchasing a copy. The portion must also be related to the subject of study in the course, rather than mere entertainment for the students or unrelated background or transitional material. For example, a “limited” portion of a film should be interpreted as the equivalent of a film clip, rather than a substantial part of the film. What amount is “reasonable” should take into account both the nature of the market for that type of work and the pedagogical purposes of the use.

How long can I keep electronic copyrighted materials in the LMS?

Copyrighted electronic materials should be available to students for a limited time period only, such as a single class session. The TEACH Act’s goal is to make availability of the material similar to the students’ exposure to the material if the students were presented with it in a face-to-face classroom experience.

How can I protect files so that only enrolled students may access them? Does the LMS provide enough protection?

Instructors should use the LMS to protect digital transmissions. The LMS is automatically loaded with courses, professor assignments and student registrations from Banner each semester. Only those students who have paid registrations in Banner have access to the LMS area by default. Additionally, if a student is dropped for non payment, he/she is automatically denied access to the LMS course area. Once payment is obtained and the schedule is reinstated, the professor must allow the student's access back into the course. The LMS errs on the side of caution in this matter. The LMS is accessed through MyBelmont, the campus Intranet and the only people who can create accounts here are constituents of the university. This specifically includes faculty, staff, alumni and students. After creating an account and logging in, the only users who see the LMS link in MyBelmont are faculty, staff and students. This further prohibits the site being accessed by non registered persons.

Is the TEACH Act limited to instructors or can students also digitally transmit copyrighted works under the TEACH Act?

The digital transmission of copyrighted works by students is covered by the TEACH Act as long as it meets the usual requirements. An instructor should go through Belmont’s Policy on Copyright Compliance and checklist with a student before the student digitally transmits a work as part of a course.

What if I recently discovered a work and don't have enough time to get permission?

When there is not enough time to obtain permission to digitally transmit a work for which the TEACH Act requires permission from the copyright owner, it is possible that the digital transmission could be allowed under the principle of fair use. Fair use involves balancing four factors:

1. The purpose and character of the use. A nonprofit educational use, such as a digital transmission as part of a course, will balance in favor of fair use.
2. The nature of the copyrighted work. Nonfiction works will balance in favor of fair use more than fiction works, which contain a high degree of creativity.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. A safe portion would be 10 percent or less of the entire work. Greater amounts will balance more and more against fair use as the amount of the portion approached the work as a whole.
4. The effect of the use on the potential market, and the value of the copyrighted work. If it would be reasonable to expect the transmission recipients to have purchased the work, this factor will balance against fair use.

If the factors balance in favor of fair use, the use must still meet the test of spontaneity. This spontaneity test will be met if the time between the idea of using the work and the time of actual use of the work does not allow for a reasonable attempt to obtain permission.

Even if the factors balance in favor of fair use and the spontaneity test is met, it would be prudent to purchase a license after using the work. You must purchase a license if you plan to use the work again in a future course, as the use would fail the spontaneity test. Some copyright holders will allow you to purchase a license for multiple academic terms. In such a case, you should estimate the number of copies needed for the future courses based on past enrollments and predicted enrollment growth.

For more information about fair use and obtaining licenses for use of copyrighted works, please consult Belmont University's Policy on Copyright Compliance.

Can I provide a link to a website?

You may provide a link to a website as long as you have no reason to believe the web site that you are linking to infringes on copyrights, and as long as the site to which you are linking does not prohibit you from linking to it. Statement prohibiting linking should be found in a section of the website identified as "Legal Notices," "Copyright Notices," etc.

Is material on the Internet in the public domain?

Internet material is not in the public domain unless the work's copyrights have expired, the work was created by the federal government, or the work was donated to the public by the copyright holder. But be careful: although a website may contain a work that is in the public domain...

Do I have to get permission to include an unpublished work in a course pack?

You must get permission to include any copyrighted work in a course pack, included unpublished works. Works are copyrighted when they are created and put into a tangible form, so an unpublished work will be copyrighted unless it has otherwise become part of the public domain.

Can I require students to download journal articles?

Belmont University's agreement with ProQuest allows faculty to instruct students to download journal articles via ProQuest. However, the practice of downloading all or parts of articles on the ProQuest databases should not become so "systematic" or "regular" as to create a collection of materials. In other words, do not use ProQuest as an end run around the requirement to get permissions to use copyrighted materials (whether from ProQuest or anywhere else) in compiling a course pack or other homemade anthology. Downloading journal articles from any other source requires an inquiry into whether there is an agreement or other license for such a use.

Can I e-mail journal articles to all the students in my class?

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How can I give notice that materials I choose to post on my website are copyrighted?

“The materials on this course Web site are protected by copyright laws and only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated.”

What is the difference between an analog version and a digital version of a work?

The process of converting from an analog version to a digital version of a work requires the user to make a copy of the work which results in a digitized form. The digitized form can be provided to students through a web interface, preferably the LMS. The analog version cannot be provided in this way. For example, a video clip from a VHS video tape can be shown in class with a TV and a VCR. The same clip must be digitized in order for it to be shown via the web.