

TEACH Act

Frequently Asked Questions

<http://www.lib.ncsu.edu/dspc/legislative/teachkit/scenarios.html>

A. Institutional Level Questions

1. Does the institution's copyright policy need to specifically address TEACH?
2. How are institutions approaching the definition of "officially enrolled"?
3. Can you define "distance education"?
4. Is it appropriate to give access to course materials after the end of a course to students with an incomplete grade?
5. TEACH is described as applying to distance education. Is access by an enrolled student in their dorm room included in the definition of distance education?
6. Can students log on and view class sessions at their own pace?
7. In invoking the TEACH exemption, is it more a matter of the instructor being clear in his/her own mind that the material being used is actually falling under the TEACH guidelines or is there further paperwork/notification that needs to be done?
8. The House report indicates that faculty and students can post materials pursuant to TEACH. What about instructional technology support staff working for the faculty but not enrolled in the class?

A. 1. Does the institution's copyright policy need to specifically address TEACH?

No. The TEACH Act policy mandate is as follows:

The transmitting institution must institute policies regarding copyright and provide informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

Thus, the TEACH Act itself does not require an institution's copyright policy to specifically address TEACH and, in fact, the TEACH Act is really just the new section 110(2) of the Copyright Act. Most institutional policies already require compliance with the law, if not the copyright law specifically.

It is also important to keep in mind that the TEACH Act exemption (with its host of requirements) is not the only way that copyrighted materials can be lawfully transmitted (online or otherwise). Materials can also be posted with the permission of the copyright holder (and remember that the faculty member is often the copyright holder) or pursuant to fair use.

[\[return to top\]](#)

2. How are institutions approaching the definition of "officially enrolled"?

There is no definition of "officially enrolled" in the TEACH Act statutory language or the legislative reports. Each institution will have to determine its own definition of this term. "Officially enrolled" can mean that the student is listed on the official class roll maintained by the institution's department of registration and records and actively complying with all course requirements. Additionally, for TEACH Act purposes, it can include other institutionally offered courses, such as online library instruction, training, and continuing education courses where the enrollment list is maintained in a department other than university registration and records.

[\[return to top\]](#)

3. Can you define "distance education"?

There are no doubt many definitions of distance education crafted for many different purposes. The TEACH Act, though often associated with distance education activities, is not limited to "distance education" and does not even use the phrase in its text. The TEACH Act modifies section 110(2) of the copyright act which pertains to *transmissions* of performances and displays of copyrighted works. To transmit a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent. Therefore, any time the performance or display of a copyrighted work is transmitted, TEACH is potentially implicated. This would include "distance education courses", "traditional" courses with an online component, cable TV courses, and so forth.

[\[return to top\]](#)

4. Is it appropriate to give access to course materials after the end of a course to students with an incomplete grade?

Although the TEACH Act does not specifically address this situation, the legislative history indicates an expectation that a common sense approach will be applied in implementing TEACH. Allowing access to course materials after the end of a course to a student with an incomplete grade, assuming all the other TEACH requirements are met, would not seem to violate this expectation because that student is still taking the course. Access to materials that are not posted pursuant to TEACH would always be acceptable. Access to TEACH materials would be acceptable if they fall within a "class session" that is still ongoing with respect to that student.

[\[return to top\]](#)

5. TEACH is described as applying to distance education. Is access by an enrolled student in their dorm room included in the definition of distance education?

Yes, that access would qualify as a transmission that could use the TEACH exemption. See response to Question No. A. 3, *supra*. Furthermore, TEACH was specifically designed to eliminate the previous requirement of section 110(2) that the student receiving the transmission be located in a classroom or similar place normally devoted to instruction. Therefore, where the enrolled student is physically located is not important.

[\[return to top\]](#)

6. Can students log on and view class sessions at their own pace?

Yes. A class session is generally that period during which a student is logged on to the server of the institution making the display or performance. It is likely to vary with the needs of the student and with the design of the particular course. See also, Question C.4, *infra*.

[\[return to top\]](#)

7. In invoking the TEACH exemption, is it more a matter of the instructor being clear in his/her own mind that the material being used is actually falling under the TEACH guidelines or is there further paperwork/notification that needs to be done?

Both. All the items in the TEACH checklist must be satisfied. Some can be done by the faculty member; others should be or need to be implemented at an institutional level. See the TEACH Basic Checklist at <http://www.lib.ncsu.edu/dspc/legislative/teachkit/index.html>

B. Technological Questions

1. What do you mean by streaming technology?
2. Is there technology currently available that would prevent students from further disseminating the materials? If so, what is it? If not, then how do you prevent it?
3. Regarding retention: a student can retain anything with a tape recorder and a video camera. Are these beyond the 'reasonably prevent' requirement?
4. There are readily available means to capture an audio stream. It is more difficult to capture a video stream, but we can assume that 'stream-catching' software will become increasingly available. Is the institution responsible for continuously responding to these developments in the open market?

B.1. What do you mean by streaming technology?

Streaming media refers to the transmission of digital audio and video files over an IP network, in real time or on-demand, while prohibiting users from storing the files locally. RealNetworks, Microsoft, and Apple all have streaming options.

[\[return to top\]](#)

2. Is there technology currently available that would prevent students from further disseminating the materials? If so, what is it? If not, then how do you prevent it?

We are still searching for technology that is easy to implement at the server level, scalable, affordable, and effective across different computing platforms. Many proprietary packages exist. Whether any of them are feasible for widespread university implementation of TEACH is another question. The statute only requires "technological measures that reasonably prevent" students from retaining the material beyond the class session and disseminating it. This suggests that streaming software would be adequate for downstream control of video and audio material. For text and still images, consult your computing staff for the most reasonable method they can implement. It may involve one or more methods, such as disabling the user's right click function in connection with the transmission, or imposing a transparent image over the material (so attempts to copy or save only capture the transparent image, not the underlying content), or imposing a digital watermark to make it easier to trace violations. The critical point is that technology will evolve, so you must regularly assess whether new and better downstream controls are feasible.

[\[return to top\]](#)

3. Regarding retention: a student can retain anything with a tape recorder and a video camera. Are these beyond the 'reasonably prevent' requirement?

These are beyond the "reasonably prevent" requirement. You cannot deliver technological protections through the Internet that will deter such practices.

[\[return to top\]](#)

4. There are readily available means to capture an audio stream. It is more difficult to capture a video stream, but we can assume that 'stream-catching' software will become increasingly available. Is the institution responsible for continuously responding to these developments in the open market?

Yes. And that's true for all downstream controls. Today's "reasonable" technology will be obsolete at some point in the future, and new controls will be expected for legal compliance.

C. Faculty/Content Questions

1. Can we use single articles from password protected online newspapers (e.g., Wall Street Journal) for one semester on Blackboard websites?
2. Are e-coursepacks allowed?
3. Can a faculty member scan a copyrighted article and post it at a password protected course site for a limited time?
4. In an asynchronous learning environment, what constitutes a class session? How do you define class session?
5. If a PowerPoint accompanies a video stream lecture, is it ok to allow the students to download the PowerPoint file?
6. Can you disseminate videos that the institution has purchased?
7. How does this affect/interact with e-reserves?
8. What happens when most students are in the classroom but you are streaming it to a few?
9. Please give examples of when it is permissible to digitize a work?
10. We have items that are available throughout an online course and not just a specific class. Is that legal?
11. What if no analog version is available to the institution and the only digital version available would require circumventing the anti-piracy system? May an institution circumvent?
12. Can course materials be used multiple semesters?
13. Do course websites in course management systems like Blackboard and WebCT fall under TEACH?
14. Does TEACH include the display of newspaper articles?
15. Can we allow students to download to a CD/DVD and take it home?
16. Is it legal to a) store live classroom teaching in a digital video format and then b) stream the video on the instructor's website with no login control?
17. If instructors scan articles, create pdf files, and post in course management systems like Blackboard, are they covered by TEACH? What if the work is purchased by the library?
18. Does TEACH only apply to password protected sites?
19. Would digital images from a subscription website be considered appropriate for invoking the TEACH Act?
20. Please give an example of a work produced for mediated instructional activities delivered via a digital network.
21. What are mediated instructional activities?
22. Does the use of 'supplemental materials' fall outside of the 'directly related' criterion?
23. If students post online copyrighted material as part of mediated instruction/discussion, do they have to post a copyright warning with it to be covered by TEACH?
24. Does TEACH apply to text?
25. Video within Blackboard should not be downloadable, right?
26. If using slides or art under TEACH, does one need to find and use a pre-existing digital version or can one convert to digital from a slide?
27. Do slides of artwork made from books in the library's collection constitute legally acquired items in the context of the TEACH Act?
28. If an instructor would normally show an entire video in class, would a 'reasonable portion' for distance education also be the entire film?
29. Can a distance education class have a direct link to e-reserves? Would this be ok under fair use or do you have to go through the library home page?
30. How does TEACH apply to face-to-face teaching that includes an online component?

C.1. Can we use single articles from password protected online newspapers (e.g., Wall Street Journal) for one semester on Blackboard websites?

The first consideration when dealing with material obtained from password protected sites or subscription sites is whether or not your proposed use is permitted by the license that probably accompanies the site. Most subscription or protected sites have some kind of license that was either negotiated or is just a click-through. Review the language of that license/contract carefully. The language of the license will govern over copyright law. If your use is prohibited, the only recourse is to contact the site owner or copyright holder and request permission.

If the proposed use is not prohibited by the license, the next issue will be whether the professor would ordinarily display the article in a face-to-face teaching session. If not, the transmission of the display would not be authorized by TEACH. If he/she would display it in a live classroom setting, then the other requirements of TEACH would need to be met, including limiting access to the article to students enrolled in the class and using reasonable technological measures to prevent retention and dissemination by the student after the online class session is over.

If the proposed use is not prohibited by the license and TEACH is not a good option, you may also use the article if there is compliance with some other part of copyright law. That typically boils down to "fair use" under section 107 of the copyright act, or permission from the copyright holder.

[\[return to top\]](#)

2. Are e-coursepacks allowed?

Not under TEACH.

[\[return to top\]](#)

3. Can a faculty member scan a copyrighted article and post it at a password protected course site for a limited time?

This is a variation of Question C.1., supra. Compliance with TEACH, fair use, or permission is required.

[\[return to top\]](#)

4. In an asynchronous learning environment, what constitutes a class session? How do you define class session?

The Senate and House Reports state the following: "A class session is generally that period during which a student is logged on to the server of the institution making the display or performance. It is likely to vary with the needs of the student and with the design of the particular course. A particular class session cannot last for the entire semester, but the materials can remain on the institution's server for the duration of its use in one or more courses. The materials may be accessed by a student EACH time the student logs on to participate in the particular class session of the course in which the display or performance is made."

It thus appears permissible for a student to log onto the controlled content multiple times, and he or she may log on for a greater or lesser duration than a 60 or 90 minute classroom period.

However, at the current time, there appear to be at least two interpretations of the report's language concerning "class session". The more conservative approach suggests that content should not be accessible by

students any longer than the mediated instructional period for the online class. That is, when the professor is ready to move the online class to another topic in the course, a new “class session” begins.

The other interpretation, and that which is endorsed by the authors of the Senate Report, is that the primary purpose of defining a “class session” is in relation to the requirement that the student not have the work in accessible form for longer than the class session. As long as the downstream controls are in place, reasonably preventing retention by the student after logging off, the student could revisit the copyrighted material online anytime throughout the course, if the professor so desires.

[\[return to top\]](#)

5. If a PowerPoint accompanies a video stream lecture, is it ok to allow the students to download the PowerPoint file?

No, if the PowerPoint file contains copyrighted material obtained without permission and not qualifying for fair use. This situation would necessitate an analysis of the copyrighted materials that might be included in the PowerPoint. Much of the PowerPoint presentation is likely to be the original work of the faculty author and, therefore, should not present a copyright issue. However, should there be any individual copyrighted works imbedded in the PowerPoint that belong to another copyright holder, TEACH would not authorize the download of those materials by the students. This is due to the TEACH requirement that prohibits the student from having the work in accessible form for longer than the class session.

[\[return to top\]](#)

6. Can you disseminate videos that the institution has purchased?

It is not entirely clear what is meant by “disseminate.” If the question is whether or not the physical copies of a video purchased by the institution can be loaned, the answer would be “yes” under the first sale doctrine, unless the institution has otherwise specifically agreed not to loan the video. Read any license or purchase agreement that accompanies the video.

If the question is whether the institution can transmit the video via an online course, then the answer is “it depends.” First, the institution would have to ascertain whether or not the work was “produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks.” In other words, you cannot use TEACH for works that are created commercially for purposes of online education. Otherwise, the institution likely can transmit reasonable portions of the work under TEACH. If the work is not already in a digital format, the institution can digitize the ‘analog’ work if either a digital version is not available to the institution or the digital work is technologically protected to prevent TEACH uses.

[\[return to top\]](#)

7. How does this affect/interact with e-reserves?

The TEACH Act is intended “to require the performance or display to be analogous to the type of performance or display that would take place in a live classroom setting. Therefore, it is not intended to address other uses of copyrighted works in the course of digital distance education, including student use of supplemental or research materials in digital form, such as electronic course packs, e-reserves, and digital library resources.

Such activities do not involve uses analogous to the performances and display currently addressed in section 110(2)." *Senate Report*

[\[return to top\]](#)

8. What happens when most students are in the classroom but you are streaming it to a few?

The TEACH Act requirements apply to those who are receiving the streamed version.

[\[return to top\]](#)

9. Please give examples of when it is permissible to digitize a work?

The TEACH Act specifically authorizes the digitization of print or other works in analog format under the following conditions:

You may only digitize amounts authorized to be performed or displayed under section 110(2) as amended by the TEACH Act; and either

a. There is no digital version available to the institution; or

b. The digital version that is available to the institution is technologically protected in a manner that prevents its use for section 110(2) purposes.

Neither the statute nor the legislative history discuss what is meant by the term "available" in this context. However, the copyright act and long experience with its library provisions may provide some reasonable guidance as we begin our interpretation and implementation of TEACH Act terms. Under the library provisions (17 U.S.C. 108), qualifying libraries can reproduce entire works under certain conditions if, after a reasonable search, an unused replacement cannot be found at a fair price. This has long been interpreted as a fair and reasonable price given the standard markets and outlets for obtaining the work. Such reasonable evaluations are not beyond the good faith efforts of higher education institutions. The TEACH Act probably does not require the purchase of a digital work for any price under any terms but rather attempts to discourage the wholesale digitization of analog works in lieu of the purchase or license of digital versions. Thus, an exorbitantly expensive work or a work with draconian license terms may well be fairly characterized as "not available." On the other hand, a journal that is also available digitally, for a reasonable price and with standard license terms but which the library has not subscribed may well be "available" and, therefore, unavailable for TEACH digitization.

Remember, however, that even if TEACH does not authorize the digitization, you may still be able to avail yourself of fair use for at least a modest part of the work.

[\[return to top\]](#)

10. We have items that are available throughout an online course and not just a specific class. Is that legal?

This is an open question. See discussion of "class session" in the response to Question C. 4, supra.

[\[return to top\]](#)

11. What if no analog version is available to the institution and the only digital version available would require circumventing the anti-piracy system? May an institution circumvent?

No. This would likely violate the anti-circumvention provision of the Digital Millennium Copyright Act. It does seem illogical, though, since you can digitize an analog version when the digital version has copy-protection technology.

[\[return to top\]](#)

12. Can course materials be used multiple semesters?

Yes. Discussions with the TEACH Act negotiators indicated that this circumstance was specifically discussed and approved and was intended to be reflected by the statement in the Senate Report that "works may remain on the server of the institution or government body for the duration of its use in one or more courses."

[\[return to top\]](#)

13. Do course websites in course management systems like Blackboard and WebCT fall under TEACH?

Yes. That is, they must comply with TEACH or some other part of copyright law if they include copyrighted content that does not belong to the instructor. The fact that the content is in a Blackboard or WebCT package does not insulate it from copyright requirements.

[\[return to top\]](#)

14. Does TEACH include the display of newspaper articles?

Works can be displayed via a transmission in the amounts that they would typically be displayed in a live classroom setting. Display of a newspaper article would be subject to this condition. It is not outside the realm of possibility that an instructor might display a short newspaper article in a live classroom setting, perhaps using it as a basis for a class discussion. If so, then it would qualify for use in an online course pursuant to TEACH. On the other hand, if the instructor just wants the students to read the article themselves, perhaps for later discussion in class, then TEACH would not permit the work to be displayed within the online course. The instructor would then be left with the options of fair use or obtaining permission.

[\[return to top\]](#)

15. Can we allow students to download to a CD/DVD and take it home?

No, not under TEACH. This would specifically violate the requirement that the student not retain the work in accessible form for longer than the class session.

[\[return to top\]](#)

16. Is it legal to a) store live classroom teaching in a digital video format and then b) stream the video on the instructor's website with no login control?

It is if the instructor holds the copyright to all of the materials being performed or displayed or has gotten the appropriate permission. Otherwise, no, not under TEACH. Authentication (verifying that only students enrolled in the course are accessing the material) is one of the requirements of TEACH.

[\[return to top\]](#)

17. If instructors scan articles, create pdf files, and post in course management systems like Blackboard, are they covered by TEACH? What if the work is purchased by the library?

This is a very broad question and contains multiple permutations and scenarios. It is unlikely that displaying an entire article in a course website would be permitted under TEACH since TEACH only authorizes displays in an amount comparable to what would be typically displayed in a live classroom setting. Creating pdf files is not prohibited or allowed per se but would depend on the work that was being incorporated into the pdf and whether or not the amount was comparable to that typically displayed in a live classroom setting. Whether or not the work is owned by the library does not alter the amount limits but might possibly play a role in the requirement that the work from which the copy is made is a lawfully made and acquired work. As noted above, posting within a course management system like Blackboard does not relieve the faculty member from the requirements of copyright law.

[\[return to top\]](#)

18. Does TEACH only apply to password protected sites?

TEACH requires that the transmission is made solely for, and, to the extent technologically feasible, is received only by students officially enrolled in the course for which the transmission is made. Password protection is one such authentication method. There may be others including key encryption.

[\[return to top\]](#)

19. Would digital images from a subscription website be considered appropriate for invoking the TEACH Act?

The fact that the source is a subscription site does not mean use of the images will necessarily be allowed under TEACH. If the subscription agreement does not bar such use and the requirements of TEACH are met, then it would be OK.

[\[return to top\]](#)

20. Please give an example of a work produced for mediated instructional activities delivered via a digital network.

Any digital educational materials designed for use in online courses would qualify. The bar on the use of such materials in TEACH is intended to protect the market for such materials. It thus seems reasonable to read this as applying to digital commercial works or works that can be bought, used, or licensed for a fee and designed for use in an online course.

[\[return to top\]](#)

21. What are mediated instructional activities?

Mediated instructional activities are activities that use such [permitted] works

- As an integral part of the class experience
- Under the control or actual supervision of the instructor
- In a manner analogous to performances and displays in live classroom settings

According to the Senate Report, such activities must use the works as part of the course rather than ancillary to it. Thus, the TEACH exemption would not include supplemental reading such as coursepack materials. The report also indicates that e-reserves are not included if they are not analogous to the performances and displays of a live classroom setting.

[\[return to top\]](#)

22. Does the use of 'supplemental materials' fall outside of the 'directly related' criterion?

This question refers to the language in the TEACH Act that requires that the performance or display be directly related and of material assistance to the teaching content of the transmission. The Senate Report has this to say about the meaning of 'directly related': "The requirement ... that the performance or display must be directly related and of material assistance to the teaching content of the transmission is found in current law, and has been retained in its current form. As noted in the Register's Report, this test of relevance and materiality connects the copyrighted work to the curriculum, and it means that the portion performed or displayed may not be performed or displayed for the mere entertainment of the students, or as unrelated background material."

Whether or not any particular 'supplemental materials' fall outside this description would necessarily be a determination made by the individual instructor. However, the requirement that materials can only be displayed in an amount typically displayed in a live classroom setting might actually be more determinative of whether or not a particular group of materials, described as 'supplemental', could be displayed pursuant to TEACH. 'Supplemental' materials, as commonly thought of, would probably not be materials that an instructor would select to display in a live classroom setting and, thus, would fail this TEACH requirement. Also, the materials must be used as part of mediated instructional activity.

[\[return to top\]](#)

23. If students post online copyrighted material as part of mediated instruction/discussion, do they have to post a copyright warning with it to be covered by TEACH?

Presumably yes, since including a copyright notice is a requirement that attaches to the transmission of a work pursuant to TEACH rather than attaching to a particular type of individual doing the posting. However, perhaps this requirement can be satisfied by a prominent notice/warning that covers the entire course website. This is one of those 'best practices' to be developed by the general community of TEACH users. Note also the posting must be done under the instructor's supervision to qualify for TEACH.

[\[return to top\]](#)

24. Does TEACH apply to text?

Of course, but see amount limitations for display discussed for Question C. 14, supra.

[\[return to top\]](#)

25. Video within Blackboard should not be downloadable, right?

Right, not if you are not the copyright holder and you intend to invoke TEACH.

[\[return to top\]](#)

26. If using slides or art under TEACH, does one need to find and use a pre-existing digital version or can one convert to digital from a slide?

See discussion for Question C. 9, supra. It would be prudent to make a good faith search to determine if a digital version exists and is reasonably "available."

[\[return to top\]](#)

27. Do slides of artwork made from books in the library's collection constitute legally acquired items in the context of the TEACH Act?

The Senate Report, in discussing "lawfully acquired" works, indicates as examples of such works those that are typically purchased, licensed, rented, or made as a fair use copy. To digitize the portions of the books as described here would require meeting the requirement that no digital version is available to the institution as discussed in Question C. 9, supra. In other words, it would be better to digitize directly from the legally acquired book than from the slide.

[\[return to top\]](#)

28. If an instructor would normally show an entire video in class, would a 'reasonable portion' for distance education also be the entire film?

Probably not. Transmission of an entire audiovisual work has never been authorized under section 110(2). (Recall that the TEACH Act is really the new section 110(2) of the copyright act.)

[\[return to top\]](#)

29. Can a distance education class have a direct link to e-reserves? Would this be ok under fair use or do you have to go through the library home page?

There is nothing in the TEACH Act that would prohibit a direct link to e-reserves or require it to go through the library home page. In fact, there is nothing in the copyright act prohibiting links per se. The critical question is whether the e-reserves are in compliance with copyright law (via fair use or permissions).

[\[return to top\]](#)

30. How does TEACH apply to face-to-face teaching that includes an online component?

TEACH applies to transmissions of performances and displays whether or not those transmissions are part of an entirely online course or merely a component of a course that also has face-to-face teaching.