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Jessica Reyman

## **Copyright, Distance Education, and the TEACH Act: Implications for Teaching Writing**

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The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 was developed to update copyright law to accommodate the uses of copyrighted materials in distance-education environments. This article presents an analysis of the TEACH Act and its implications for teaching writing, with an aim toward building awareness among faculty and administrators so that they can become part of the critical conversation about copyright law as it affects teaching and learning with technology.

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**T**hose teaching writing with digital technologies have no doubt encountered many questions regarding what constitutes a lawful use of copyrighted material in their courses: Can I create a digital copy of this work and post it to the class website? Can I distribute this audio, multimedia, or video clip to my students? How do I make responsible decisions concerning the use of copyrighted works in digital form? And, of course, will I get sued? Answers to such questions are often based on commonly-held beliefs that are, in fact, misconceptions about educators' legal rights. On the one hand, many instructors perceive that their rights in online classes are like their rights in face-to-face classes. This is not necessarily the case—current technology presents the means through which digital texts can be copied and distributed far more widely and

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with greater ease than texts in analog form, thus requiring additional safeguards against misuse. On the other end of the spectrum, the growing copyright permissions market and a proliferation of licensing for articles and other materials for courses have given the impression that royalties must be paid for *any* use of copyrighted material, which is another false assumption. In the discussion that follows, I present an analysis of a recent development in copyright law with an aim toward dispelling some of these misconceptions surrounding legal rights for educational use of copyrighted materials.

This article seeks to further the ongoing conversation about the implications of copyright law for the teaching of writing by addressing a recent piece of legislation affecting educational use: the Technology, Education, and Copyright Harmonization (TEACH) Act<sup>1</sup>. Signed by President Bush in November 2002, the Act was intended to revise copyright law to accommodate the uses of copyrighted materials in digital learning environments. TEACH applies to those activities that fall under the category of “distance education,” which, in this case, includes those activities that rely on the use of digital technology to present students with course materials, both for courses conducted entirely online and for those courses that involve only a digital component. The provisions of TEACH are limited to performances and displays of materials and do not apply to materials students use for private study. In a writing class, performance of an audio version of a play or a video may be protected under the TEACH Act, as well as display of a digital text, such as an image, map, or poem to be used for what is comparable to a “class session.” The TEACH Act, however, does not apply to textbooks, coursepacks, articles, or other materials intended for longer-term use and retention by students. Since it was signed into law, the Act has created much controversy, due largely to confusion about its applications and implications for distance education. Many faculty and administrators do not clearly understand the legal issues surrounding the TEACH Act, and, therefore, are not able to take advantage of its benefits nor recognize its limitations.

The TEACH Act was launched in response to a recognized need for a copyright provision that extends the rights of instructors in face-to-face classroom settings to those working in digital learning environments. Previous to the Act, Section 110 of the U.S. Copyright Act gave the right of “performance or display of a work by instructors or pupils *in the course of face-to-face teaching activities*” (75, emphasis mine) but made no mention of teaching activities

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that relied on digital technologies<sup>2</sup>. In 1998, Congress asked the U.S. Copyright Office to prepare a report that addressed “how to promote distance education through digital technologies, including interactive digital networks,

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while maintaining an appropriate balance between the rights of copyright owners and the interests of users.”

Based on the recommendations in the report, TEACH was introduced and, after almost two years, became law. The intentions of the Act seemed consistent with both the educational mission of

distance instructors and the interests of copyright holders: a balance between users’ rights (those of teachers and students) and copyright owners’ rights (those of authors and publishers). The Senate Report accompanying TEACH reinforces this idea:

The Act allows students and teachers to benefit from deployment in education of advanced digital transmission technologies like the Internet, while introducing safeguards to limit the additional risks to copyright owners that are inherent in exploiting works in a digital format. (United States)

The educators and administrators of the American Library Association and the National Association of State Universities and Land Grant Colleges, along with several other library and educational associations, saw the Act as a viable response to the desire for reduced ambiguity in the law governing use of materials in distance education. In application, however, the TEACH Act may create more obstacles than freedoms for those teaching with digital technology. The Senate Report’s assertion that the Act’s restrictions are intended to ward against the “additional risks to copyright owners that are inherent in exploiting works in a digital format” is telling. While the goal asserted is balance, the scales appear to weigh in favor of copyright owners’ interests. Works in digital form “inherently” challenge the established rights of copyright owners, and teaching in digital environments is “exploitative.” The “safeguards” do not aim primarily to protect educators’ rights in an age of increasingly restrictive copyright laws but rather to protect copyright owners’ rights that are threatened by educational uses. As such, I argue that the Act establishes a new level of formal expectations, or “safeguards,” that may, in effect, limit the uses of copyrighted materials in online learning environments necessary for quality educational experiences. The quality of the use of digital technology for in-

struction depends on our ability to offer the course materials and learning opportunities that meet our pedagogical goals; undue restrictions on such activity can only limit the value of our online teaching.

The TEACH Act explicitly allows instructors to “perform[. . .] a nondramatic literary or musical work or reasonable and limited portions of any other work, or display[. . .] a work in an amount comparable to that which is typically displayed in the course of a live classroom session.” Such a provision gives distance educators an exemption from paying royalties or seeking permission to use copyrighted works in their teaching activities under certain circumstances. Important activities allowed under the TEACH Act include the opportunity to transmit works to students outside of the face-to-face classroom or other physical location to distant receiving locations; to store copyrighted content for brief periods of time, such as that which occurs in the process of transmitting digital content; and to create digital versions of print or analog works<sup>3</sup>. With these provisions, TEACH fills gaps in the former version of Section 110 of U.S. copyright law by clarifying the ways educators are able to use copyrighted materials, specifically in digital environments. While the Act extends educators’ rights in several essential ways, it is also plagued with numerous restrictions governing implementation. Kenneth Crews’ article, “New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act,” performs the important work of explicating the Act’s many provisions and their restrictions. Crews notes that “[e]ducators will not be able to comply by either accidental circumstances or well-meaning intention. Instead, the law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.” Such procedures include both institutional and technological requirements from instructors and administrators.

Many requirements of the Act fall squarely on the shoulders of educators. Educators are responsible for making decisions governing the conditions for use of materials: what type of work, how much, and in what ways it will be used. The TEACH Act outlines a thorough set of stipulations for such decisions. Conditions for use required under TEACH include the following:

- Use is limited to works that are *performed* (such as reading a play or showing a video) or *displayed* (such as a digital version of a map or a painting) during class activities. The TEACH Act does not apply to materials for students’ independent use and retention, such as textbooks or articles from journals;

- The materials to be used cannot include those primarily marketed for the purposes of distance education (i.e., an electronic textbook or a multimedia tutorial);
- Use of materials must occur “under the actual supervision of an instructor”;
- Materials must be used “as an integral part of a class session”;
- Use must occur as a “regular part of the systematic mediated instructional activities”; and
- Students must be informed that the materials they access are protected by copyright.

Most instructors are not unfamiliar with making decisions concerning the use of copyrighted materials in their courses. Institutions of higher education often offer “indemnification” of employees that may be applied in the case of potential copyright infringement claims, if a faculty member has made an informed decision in good faith. Unfortunately, informed judgments are difficult to come by under the detailed restrictions of TEACH. Many of its requirements are not intuitive to instructors insofar as they are not comparable to their rights for face-to-face teaching activities.

University of North Carolina law professor Laura Gasaway, in her writings about copyright issues related to distance education, describes what she perceives as a discrepancy between the expectations of students and educators with those of copyright holders. She states that teachers “view distance education as the modern equivalent of the classroom and expect that there is no difference in the types of works that may be performed or displayed” (795). Similarly, students

expect that they will not be treated differently than students who take the same course in a traditional classroom. They believe that their learning experiences will not suffer because of restrictions on the types of materials that are performed or displayed in the course, restrictions that do not apply to the traditional classroom. . . . They also assume that access to these materials will not be more expensive than it is for on-campus students. (797)

Gasaway goes on to note that, on the other hand, copyright owners

expect that educational institutions that originate distance-learning courses will purchase these materials. They expect that schools that provide online courses

will obtain licenses for providing digital access to textual materials. Owners presume that distance-education providers will restrict access to their copyrighted works to enrolled students and will implement technological controls to prevent downstream copying. (798)

Such expectations about the use of digital materials in distance education can lead to unlawful practices. Instructors and students may make uses of copyrighted materials that do not take into account that the exchange of materials online requires additional measures to prevent further distribution to larger markets. At the same time, publishers may not understand that the opportunity to profit from licensed digital works does not obviate the need for educational exemptions to copyright.

The TEACH Act seeks to balance the competing interests of students and teachers with those of copyright owners by establishing numerous responsibilities institutions must meet in order for its faculty to qualify for the provisions of TEACH. In addition to instructor responsibilities, the Act places burdens at an institutional level on technologists and other administrators. Responsibilities include:

- Limiting access to material to only those students enrolled in the class;
- Ensuring that digital versions are created from analog works only if a digital version of the work is not already available;
- Employing technological measures to “reasonably prevent” retention of the work “for longer than the class session”;
- Developing copyright policies on the educational use of materials; and
- Providing informational resources for faculty, students, and staff that “accurately describe, and promote compliance with, the laws of the United States relating to copyright.”

As distance-education developers and administrators are realizing, the TEACH Act has proven difficult to implement because it requires a high level of commitment at an institutional level. Before educators can benefit, TEACH requires that colleges and universities update (or create) copyright policies related to distance education and provide technological protection measures that limit access and use of materials, neither of which are small tasks. According to a 2003 article in the *Chronicle of Higher Education*, “Indeed, confusion over the new law has entire institutions applying the brakes. For example, North Carolina State University and Pennsylvania State University are not putting any

new copyrighted content in online courses until questions about the law's provisions are resolved" (Carnevale A29). Even if institutions are not entirely withholding the use of copyrighted materials in online courses, others are simply not eligible for the TEACH provisions because they fail to meet the requirements. Institutions without updated copyright policies in place and educational programming to support copyright training, or those that do not have the technological infrastructure to reasonably prevent retention of works, are not eligible to enjoy the benefits of the Act.

**The restrictions of the TEACH Act present several issues of particular concern for writing instructors, many of whom have embraced the educational opportunities afforded by digital technologies.**

The restrictions of the TEACH Act present several issues of particular concern for writing instructors, many of whom have embraced the educational opportunities afforded by digital technologies. First, TEACH does not account for the range of teaching activities that occurs in online writing curricula. Crews notes that TEACH is "built around a vision that distance education should occur in discrete installments, each within a confined span of time, and with all elements integrated into a cohesive lecture-like package." Such a vision, of a packaged course with discrete components, simply does not apply to the wide range of collaborative and interactive activities that constitute writing classes today. Among the Act's most restrictive conditions is the limitation placed on instructors to use materials only as part of "mediated instructional activities" that are an "integral part of a class session." Most writing classes are not entirely lecture-based, or "mediated," in the traditional sense. Much of students' learning experiences in these classes involves writing; participation on discussion boards, blogs, and other online forums; and peer dialogue—most without the direct intervention of the instructor. In addition, in online writing courses, it is difficult to determine what constitutes a single "class session," as distance-learning activities occur free from the spatial and temporal restrictions of traditional class meetings. Class activities often overlap and happen concurrently, involving different levels of peer and instructor interaction, and are likely not confined to a single, synchronous, well-defined and mediated session. The potential for digital technology to reach students who are not able to meet the time constraints of the face-to-face class and who can thrive in the decentered and less-mediated classroom is not encouraged under the provisions of TEACH. With the restrictions outlined for conditions of use, writing instructors are left to make difficult decisions to alter their teaching methods to comply with TEACH or to limit their use of course materials in online instruction.



Second, the stipulations of the TEACH Act do not allow the same level of academic freedom for instructors selecting materials and designing online courses as those teaching face-to-face. Academic freedom, or the freedom of inquiry and expression in teaching and research activities given to faculty at institutions of higher education, is something that we often take for granted. In teaching practices, such freedom ensures that professors, presumably experts in their fields and skilled instructors, are the ultimate decision makers for course content. Unfortunately, the TEACH Act is only one manifestation of a recent trend toward the “de-skilling” of online instruction; as online courses are packaged, reused, or even sold by institutions, instructors enjoy fewer freedoms in determining the content of the online courses they teach. TEACH contributes to this trend by shifting responsibility for course content from instructor to institution. Law scholar Tomas A. Lipinski notes in his analysis and critique of the TEACH Act that the law has the potential to make distance-education teachers and students “second-class citizens” in academia: “The changes contemplated by TEACH represent a drastic departure from 17 U.S.C § 110(2) as it existed under previous law. TEACH requires educational institutions to meet new standards and continues to perpetuate a somewhat ‘lesser citizen’ status to educators and students in distance education environments” (97). The many institutional requirements of the Act encourage increased involvement on an institutional level in determining what course materials are used, and under what conditions, than any previous educational exemption to copyright. In composition studies, where instructors are often rewarded for their teaching contributions and innovation in course content, this becomes especially problematic.

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Third, the TEACH Act raises concerns for those scholars and teachers of writing who recognize a recent trend in copyright law toward an imbalance between increased restriction by copyright owners over materials and decreased opportunities for educational uses. In a 1996 publication in *CCC*, Andrea Lunsford and Susan West declare: “[t]he time has passed when teachers of composition and communication could ignore debates about intellectual property” (383). And their charge was not ignored. In the years since, many important discussions of intellectual property, copyright, and authorship have emerged in composition studies among those scholars interested in textual ownership in writing groups (see Spigelman), plagiarism (Howard; Buranen

and Roy), and computers and composition (see two notable collections on intellectual property that appeared in 1998: an issue of *Kairos* devoted to “Copyright, Plagiarism, and Intellectual Property” and a special issue of *Computers and Composition* on intellectual property). These works, for the most part, supported Lunsford and West’s contention that:

We believe that a gradual tilting of America’s intellectual property policies in the direction of information proprietors and away from that of users has led . . . [to] a place where we have diminishing access as scholars, writers, teachers, and students to the materials necessary to enrich the cultural landscape for all. (387)

Such scholarship challenges trends toward increasingly restrictive applications of copyright law and shows how constructions of proprietary authorship persist on our campuses, in our discipline, and in our culture.

Although not all composition scholars and instructors identify as “copyright advocates,” many, including myself, do assume some responsibility for working to preserve a balance between authors’ rights and users’ rights in a digital age, particularly as it affects teaching and research. Writing classes present an appropriate context for “problematizing” concepts that reflect the social, political, and cultural constructions of proprietary authorship and asking students to think critically about such constructions. Such problematization occurs on several levels. Some instructors rely on extensive collaboration in writing and learning, challenging a view of writing as inherently solitary. Writing theorists have long espoused the relationship between collaboration and the construction of texts; it was twenty years ago that Kenneth Bruffee argued that sharing writing contributes to a sense of community that enables students to participate actively, and Karen Burke LeFevre asserted that the writing process is inherently social—from the very point of invention. Composition theorists have also challenged the concepts of singular authorship and individualized textual ownership in the composition classroom by showing that collaboration is the natural mode of writing in the professional world (Lunsford and Ede). And as the Internet emerged as an influential technology, hypertext scholars argued that “electronic” communication was even more suited for such collaboration, dialogue, and exchange: How can the author remain an originary, solitary, and proprietary figure when works are being produced, published, and distributed in a network of endless boundaries, links, and collaboratively created structures (Bolter; Landow)?

TyAnna Herrington’s *Controlling Voices: Intellectual Property, Humanistic Studies, and the Internet* addresses this incongruity between recent schol-

arship in writing studies and trends in copyright law. She writes, "on the whole, the growing trend in academic humanism is to accept that societal belief is constructed from social interaction and dialogue among its participants" (10). On the other hand, "[t]he legal community's dominant view that knowledge is created in isolation and that the creator should maintain exclusive control over his or her work is consistent with a positivist, authoritarian stance but flies in the face of the beliefs supported by scholars in humanistic studies" (10). While digital technologies offer opportunities for dialogue and interaction in the creation of texts, recent legal developments have been shown to work in ways that increase regulation of digital texts and locate value in controlled and proprietary models for ownership<sup>4</sup>.

By making this point, I do not mean to suggest that the ideology of the "academic culture" is somehow separate from, or impervious to, the influence of legal ideology. It is important to recognize the ways in which the academy, on the whole, continues to privilege individual learning and performance and reward publication in traditional forms. Collaboration, intertextuality, and the open exchange of texts, in fact, tend to be viewed in academic environments as indicative of intellectual dishonesty rather than a natural form of authorship. Despite the challenge to this assumption by a strong body of scholarship in composition studies, even within our discipline we find that discussions of "rampant plagiarism" persist. As Candace Spigelman notes, instructors who assign collaborative writing tasks face the challenge of "asking their students to relinquish their texts, to create as well as to find meanings, to understand knowledge as socially constructed by groups as well as privately held by individuals, and to use their peers' work as unattributed sources" (22), none of which has been supported in students' previous educational experiences. Such views of individualized authorship and proprietary ownership of knowledge products, particularly with regard to digital texts, may be further perpetuated by the unintended implications of the TEACH Act. The Act presents a framework for the production and exchange of digital course materials that is based on a high level of institutional control, well-defined restrictions for use, and discrete packaging of texts. A concern for composition scholars and teachers, then, is that TEACH contradicts those practices that seek to challenge increasingly proprietary models of textual ownership in the classroom and in our discipline.

Internet technologies have, in the past, been greeted with optimism by composition scholars concerned with copyright law, understood as enabling forces for freer exchange of works, revised notions of authorship, and more

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collaborative learning spaces. In more recent years, however, we have witnessed the ways in which such technologies can just as easily be used to regulate activity on the Internet. We now live in a climate of fear promulgated by the media, content industries, and legal officials concerning the ramifications of rampant plagiarism, illegal file sharing, and unlawful uses of works. We have seen the effects of technological opportunism in scholarly publishing, where during the last several decades commercial publishers have recognized and taken advantage of the profit-making potential of online scholarly communications, driving subscription prices higher and restricting access and use of materials. As a result, technological protection measures now determine how much and in what ways we are able to access and use copyrighted materials. Many early studies of the effect of the Internet on authorship and textual ownership have been revisited and revised in recognition of the inaccuracy of early optimistic predictions. For instance, Jay David Bolter, in the preface to the second edition of *Writing Space*, responds to the criticism of the first edition as subject to technological determinism:

In the first edition I often seemed to portray the computer and earlier technologies of writing as autonomous agents. I seemed to be suggesting that these technologies themselves could change the way we organized and expressed our literary and cultural forms and even the way we think. . . . [In this edition] I acknowledge that writing technologies do not alter culture as if from the outside, because they are themselves a part of our cultural dynamic. (xiii)

As Bolter notes, the relationship between perceptions of textual ownership, technology, and copyright law is reciprocal; no single concept determines the others, but rather all exist within the dynamics of changing social and cultural contexts.

Teachers and scholars of writing are certainly not immune to these cultural forces. While opportunities for new modes of teaching and learning may be presented by digital technologies, the social, political, and economic structures of information exchange persist. The TEACH Act, in theory, attempts to find a middle ground where creators of copyrighted works can be rewarded while students and teachers can access, use, and build upon those works. But as economic markets for licensing expand and control over works in digital forms becomes more easily facilitated, the new law may very well serve to fur-

ther limit educational exemptions to copyright by employing numerous and exclusive “safeguards” to protect copyright owners’ rights to works used in distance-education settings. On the surface, TEACH serves the important purpose of lending legitimacy to that teaching activity that occurs in digital environments. In application, the Act can work in quite the opposite way by imposing stricter limitations that lessen the quality of distance-learning courses and requiring a level of institutional involvement that lowers the status of distance-education programs below that of other types of teaching.

Existing copyright policies on campuses may seem to denote clear distinctions between lawful and unlawful uses of others’ material, but it is more often the case that specific rules in regard to copyrighted material develop out of practice. As L. Ray Patterson and Stanley W. Lindberg note in their landmark text, *The Nature of Copyright*:

Most Americans think of law as consisting of written rules in the form of legislative statutes or court decisions. But law also grows out of what people actually do, that is, out of custom. Even the most comprehensive legal statute is skeletal in content, while court decisions tend to be fact-intensive (resolving disputes between litigants over specific, concrete issues). Between these two poles, therefore, there is an enormous amount of room for private action, and consistent private action can essentially ‘make’ law by reshaping existing customs (or even creating new ones) that may subsequently be honored by the courts. (9–10)

If Patterson and Lindberg are correct, then writing instructors and administrators can help to “make” law by applying the TEACH Act in careful and determinative ways in our teaching practices. Many universities are still struggling to understand the fairly new piece of legislation, and most have yet to meet its many requirements. It is clear that the TEACH Act has potentially significant implications for teaching and research in writing studies. Writing teachers and administrators have a responsibility to extend the conversation in our discipline about copyright law to the conversations on our campuses about applications of the TEACH Act.

Being able to “make” law through practice requires writing faculty and administrators to possess a strong understanding of the rights and responsibilities involved in using copyrighted material. Part of this process involves recognizing both the allowances and the limitations of TEACH and exercising rights for educational use of material under this new law. In addition, because the TEACH Act is limited in both scope and applicability, it may be necessary to seek out alternative opportunities for educational use of materials. The fair use exemption<sup>5</sup> to exclusive rights of copyright owners, a much broader provi-

sion, is one such additional opportunity for using both print and digital course materials. The Senate report accompanying the TEACH Act specifically states, "Nothing in this Act is intended to limit or otherwise to alter the scope of the fair use doctrine" (United States). The House report, also in support of continued reliance on fair use, states, "Fair use is a critical part of the distance-education landscape. Not only instructional performances and displays, but also other educational uses of works, such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine" (United States). The fair use statute is probably the most widely-applicable exemption to copyright protections for educational settings, allowing many uses of copyrighted works for the purposes of teaching in both face-to-face and online classes<sup>6</sup>. The statute states, "The fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright." As both teachers and researchers, when academics use copyrighted materials, they are often exercising their fair use rights. In the case that TEACH does not apply for a particular use, the fair use exemption should also be considered<sup>7</sup>.

Distance-education requires the use of course materials in digital form. Unfortunately, educational exemptions for using materials in digital form present new threats to copyright owners and impinge on growing markets for licensed resources. The TEACH Act presents instructors with an opportunity to extend educational uses of materials to digital learning environments. At the same time, TEACH is laden with confusing and ambiguous barriers to application. We need to remind our institutions about their responsibility to support quality educational experiences in their growing distance-education programs. This responsibility involves meeting the requirements of TEACH by creating copyright policies for teaching with technology and providing informational resources to support those policies. Just as importantly, such resources should represent the interests of those students and teachers working in distance-learning environments, and not only the interests of copyright holders. As writing instructors, we also need to offer our own interpretations of the Act based on our teaching practices: What do the concepts of "mediation," "integration," and "class session" mean in the context of our writing courses?

It is clear that as scholars and teachers of writing we have much at stake—the very value of digital technology for teaching depends on our ability to provide rewarding learning experiences for distance-education students. We are at a critical time in the development of copyright policies that affect distance education. With careful and determinative application of the TEACH Act, we

have the potential to contribute to this process and to “make” law through our actions. The TEACH Act presents us with some choices. The future may well replicate what we have witnessed in the past decade, where universities continue to fuel the permissions market and pay royalties, thus increasing rewards for packaging discrete knowledge products and restricting educators’ rights to use copyrighted materials for teaching and research. But it could look differently—the TEACH Act affords us the opportunity to involve our universities and colleges in the process of educating and informing our campus communities about copyright law as it relates to teaching in a digital age. It could provide opportunities to offer quality distance-learning experiences that meet the unique needs of our growing distance-education programs. Writing teachers and administrators have a responsibility to become part of the critical conversation about copyright law affecting online teaching and learning, and, ultimately, to present learning opportunities for distance-education students that treat them not as “second-class citizens” but rather as members of a valuable, growing educational community.

## Notes

1. U.S. Copyright Act., Art. 17, Sec. 110(2).
2. For a clear representation of the differences between the original version of Sections 110(1) and 110(2) and the revised Section 110(2), see Laura Gasaway’s comparison chart: <http://www.unc.edu/~uncclng/TEACH.htm>.
3. University digital media centers have raised concerns about whether these provisions of TEACH are in conflict with the Digital Millennium Copyright Act (DMCA) of 1998, which prevents the circumvention of technological protection measures on digital media that control access. See Foster for further discussion of the potential discrepancies.
4. Examples of such legal developments are many. The Digital Millennium Copyright Act (DMCA), codified in 1998, asserts new “anti-circumvention” provisions that make illegal any attempt to defeat antipiracy protections added to copyrighted works, and ban circumvention technologies used for that purpose. In 2002, the ruling in the *Eldred v. Ashcroft* case upheld the constitutionality of the Sonny Bono Copyright Extension Act, which extended copyright ownership an additional twenty years from the 1976 Act. And, in the past couple of years, we have seen the content industries win cases against peer-to-peer file sharing services (*A&M Records v. Napster*, 2002), file lawsuits against individual users of the networks, and challenge the legality of the technologies themselves (*MGM Studios v. Grokster*, 2005).
5. U.S. Copyright Act, Art. 17, Sec. 107.
6. Copyright scholars have recently debated the usefulness and applicability of the

fair use exemption. Lawrence Lessig argues that “fair use in America simply means the right to hire a lawyer” (187), while Siva Vaidhyanathan argues that “[i]t is our duty to push the envelope of fair use” for educational uses. See also Silberberg; Le Moal-Gray; Burk and Cohen; Bell.

7. In 2000, CCCC Caucus on Intellectual Property published a statement in CCC titled “Use Your Fair Use: Strategies toward Action.” Offering an explanation of the Fair Use statute, the caucus contends, “The good news is this—legally, we are allowed much more than many of us have been led to believe” (485). The authors go on to offer strategies for applying fair use rights for educational purposes.

## Works Cited

- Bell, Tom W. “Fair Use v. Fared Use: The Impact of Automated Rights Management on Copyright’s Fair Use Doctrine.” *North Carolina Law Review*. 76 (1998): 557–619.
- Bolter, Jay David. *Writing Space: Computers, Hypertext, and the Remediation of Print*. 2nd ed. Mahwah, NJ: Lawrence Erlbaum, 2001.
- Buranen, Lise, and Alice M. Roy, eds. *Perspectives on Plagiarism and Intellectual Property in a Postmodern World*. New York: SUNY, 1999.
- Burk, Dan L. and Julie E. Cohen. “Fair Use Infrastructure for Rights Management Systems.” *Harvard Journal of Law and Technology*. 15.1 (2001): 41–83.
- Bruffee, Kenneth A. “Collaborative Learning and the ‘Conversation of Mankind.’” *College English* 46.7 (1984): 635–652.
- Carnevale, Dan. “Slow Start for Long-Awaited Easing of Copyright Restrictions.” *Chronicle of Higher Education* 28 March 2003: A29.
- CCCC Caucus on Intellectual Property. “Use Your Fair Use: Strategies toward Action.” CCC 51.3: (2000). 485–88.
- Copyright, Plagiarism, and Intellectual Property*. Spec. issue of *Kairos: A Journal for Teachers of Writing in Webbed Environments*. 3.1 (1998). 3 Jan. 2006. <http://english.ttu.edu/kairos/3.1/>.
- Crews, Kenneth D. “New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act.” 30 Sept. 2002. American Library Association. 25 Aug. 2003. <http://web.archive.org/web/20021127113330/http://www.ala.org/washoff/teach.html>.
- Foster, Andrea L. “College Media Group Cautions That 2 Copyright Laws Could Collide.” *Chronicle of Higher Education* 18 March 2003. 3 Jan. 2006 <http://chronicle.com/free/2003/03/2003031801t.htm>.
- Gasaway, Laura N. “Impasse: Distance Learning and Copyright.” *Ohio State Law Journal*. 62 (2001): 783–820.
- . *TEACH Act Comparison Chart*. 2002. 27 May 2005 <http://www.unc.edu/~uncnlg/TEACH.htm>.
- Gurak, Laura J., and Johndan Johnson-Eilola, eds. *Computers, Composition, and Intellectual Property*. Spec. issue of *Computers and Composition*. 15.2 (1998).
- Herrington, TyAnna K. *Controlling Voices: Intellectual Property, Humanistic Studies, and the Internet*. Carbondale: Southern Illinois UP, 2001.



- Howard, Rebecca Moore. *Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators*. Stamford, CT: Ablex, 1999.
- Landow, George P. *Hypertext 2.0: The Convergence of Contemporary Critical Theory and Technology*. 2nd ed. Baltimore: Johns Hopkins UP, 1997.
- LeFevre, Karen Burke. *Invention as a Social Act*. Carbondale: Southern Illinois UP, 1987.
- Le Moal-Gray, Michele J. "Distance Education and Intellectual Property: The Realities of Copyright Law and the Culture of Higher Education." *Touro Law Review*. 16 (2000): 981–1035.
- Lessig, Lawrence. *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin, 2004.
- Lipinski, Tomas A. "Legal Reform in an Electronic Age: Analysis and Critique of the Construction and Operation of S. 487, the Technology, Education and Copyright Harmonization (TEACH) Act of 2001." *Brigham Young University Education and Law Journal*. 95 (2003): 95–164.
- Lunsford, Andrea A., and Lisa Ede. *Singular Texts/Plural Authors: Perspectives on Collaborative Writing*. Carbondale: Southern Illinois UP, 1990.
- Lunsford, Andrea A., and Susan West. "Intellectual Property and Composition Studies." *CCC* 47.3 (1996): 383–411.
- Patterson, L. Ray, and Stanley W. Lindberg. *The Nature of Copyright: A Law of Users' Rights*. Athens: U of Georgia P, 1991.
- Silberberg, Carol M. "Preserving Educational Fair Use in the Twenty-First Century." *Southern California Law Review*. 74 (2001): 617–655.
- Spigelman, Candace. *Across Property Lines: Textual Ownership in Writing Groups*. Carbondale: Southern Illinois UP, 2000.
- United States. Copyright Office. *Report on Copyright and Digital Distance Education*. Washington: U.S. Copyright Office, 1999. 27 May 2005 [http://www.copyright.gov/reports/de\\_rprrt.pdf](http://www.copyright.gov/reports/de_rprrt.pdf).
- . House of Representatives. Statement by Marybeth Peters. *The Register of Copyrights before the House Subcommittee on Courts, the Internet and Intellectual Property*. 107th Cong., 1st sess. Washington: GPO, 2001. 27 May 2005 <http://www.copyright.gov/docs/regstat062701.html>.
- . Senate. *Technology, Education and Copyright Harmonization Act of 2001*. 107th Cong., 1st sess. S. Rept. 107-031. Washington: GPO, 2001. 3 Jan. 2006 [http://thomas.loc.gov/cgi-bin/cpquery/R?cp107:FLD010:@1\(sr031\)](http://thomas.loc.gov/cgi-bin/cpquery/R?cp107:FLD010:@1(sr031)).
- Vaidhyanathan, Siva. "Fair Use in (In)Action." Blog posting. 7 Jul. 2004. Sivaocracy.net. 27 May 2005 <http://www.nyu.edu/classes/siva/2004/07/fair-use-in-inaction.html>.

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