

## Highlights of S. 487, the Technology, Education and Copyright Harmonization Act of 2001 (TEACH Act)

Title 17 U.S.C. Sec. 110 sets out an exemption that allows copyrighted works to be used in certain circumstances for educational purposes without having to seek permission from the copyright holder.

- Section 110(1) allows for the performance or display of copyrighted works in a live classroom.
- Section 110(2) provides for a more limited exemption for works used in distance education.
- Section 112 complements Section 110 to allow for making ephemeral copies of works authorized to be used by 110(2).

S. 487, the TEACH Act, would amend Sections 110(2) and 112 to expand and update the types of transmissions and categories of works.

### Highlights of S. 487

#### WHAT

Current 110(2)	Works covered under S. 487	Works not covered under S. 487
<ul style="list-style-type: none"> <li>• Performance of non-dramatic literary &amp; musical works</li> <li>• Display of any work</li> </ul>	<ul style="list-style-type: none"> <li>• Performance of non-dramatic literary &amp; musical works</li> <li>• Performance of reasonable and limited portions of any other work</li> <li>• Display of any work in an amount comparable to that typically displayed in the course of a live classroom session</li> </ul>	<ul style="list-style-type: none"> <li>• a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks</li> <li>• a performance or display that is given by means of a copy or phonorecord not lawfully made and acquired <u>and</u> the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired</li> </ul>

#### WHO CAN DO IT, WHEN, WHERE AND TO WHOM

Current 110(2)	S. 487
Governmental body or nonprofit educational institution	Governmental body or accredited nonprofit educational institution
<p>A. Performance or display is a regular part of the systematic instructional activities of the institution</p> <p>B. The performance or display is directly related and of material assistance to the teaching content of the transmission</p>	<p>A. The performance or display is made by, at the direction of, or under the actual supervision of an instructor</p> <ul style="list-style-type: none"> <li>• as an integral part of a class session</li> <li>• offered as part of the systematic mediated instructional activities</li> </ul>

	B. The performance or display is directly related and of material assistance to the teaching content of the transmission
In a classroom or similar place normally devoted to instruction, or anywhere for persons who are disabled or whose special circumstances prevent their attendance in a classroom	Anywhere (but note technological conditions that must be met)
Students Officers or employees of governmental bodies as a part of their official duties or employment	The transmission of material is made solely for (and, to the extent technologically feasible, the reception of such transmission is limited to): <ul style="list-style-type: none"> <li>• students officially enrolled in the course for which the transmission is made</li> <li>• officers or employees of governmental bodies as a part of their official duties or employment</li> </ul>

### UNDER WHAT (ADDITIONAL) CONDITIONS

The transmitting body or institution:

- i. institutes policies regarding copyright, provides informational materials to faculty, students and relevant staff members that accurately describe, and promote compliance with, the U.S. copyright laws, and provides notice to students that materials used in connection with the course may be subject to copyright protection, and
- ii. in the case of digital transmissions,
  - applies technological measures that reasonably prevent:
    - retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session and
    - unauthorized further dissemination of the work in accessible form by such recipients to others, and
  - does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination

### DEFINITIONS AND MEANINGS:

Term	Means
Mediated instructional activities	With respect to the performance or display of a work by digital transmission, refers to activities that use such work <ul style="list-style-type: none"> <li>• as an integral part of the class experience</li> <li>• controlled by or under the actual supervision of the instructor</li> </ul>

	<p><u>and</u></p> <ul style="list-style-type: none"> <li>analogous to the type of performance or display that would take place in a live classroom setting</li> </ul>
<p>➤ “Mediated instructional activities” does <u>not</u> refer to activities that use, in one or more class sessions in a single course, such works as textbooks, course packs or other materials which are typically purchased or acquired by students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use</p>	
<p>Accreditation</p>	<ul style="list-style-type: none"> <li>for post-secondary educational institutions, is determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the U.S. Dep't of Education</li> <li>for elementary or secondary educational institutions, is recognized by the applicable state certification or licensing procedures</li> </ul>

## LIABILITY OF THE INSTITUTION FOR INFRINGEMENT

Activity not an infringement	Conditions
<p>No infringement because of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the authorized performance or display of that material</p>	<ul style="list-style-type: none"> <li>the body or institution must maintain the material in such a way as to prevent its accessibility to others than the intended recipients</li> <li><u>and</u></li> <li>shall not maintain the material on the system or network for longer than is reasonably necessary to facilitate the transmission</li> </ul>
<p>Authorized transmitting organizations are not liable for infringement if they load on their servers copies or phonorecords of works that embody the performance or display authorized to be transmitted under Section 110(2)</p>	<ul style="list-style-type: none"> <li>the copies must be used solely by the body or institution <u>and</u></li> <li>no further copies may be made except as allowed under Section 110(2) <u>and</u></li> <li>the copies must be used solely for the authorized transmissions</li> </ul>

## ANALOG TO DIGITAL

The institution may convert from analog to digital the portion or amount of that work authorized to be used under Section 110(2) if:

- no digital version of a work is available to the institution or
- the digital version that is available is subject to technological measures that prevent its use for distance education