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INTRODUCTION

The Technology, Education, and Copyright Harmonization (TEACH) Act is intended to make it easier to use copyrighted works in distance education. Unlike the former law, which limited transmissions to classroom settings, the new enactment permits educators to send content to students anywhere. Accordingly, it revises Section 110(2) of the Copyright Act by extending the exemption from infringement liability for instructional broadcasting to include digital distance learning or distance education.

Under the new law, educators do not have to seek permission of copyright holders to use materials, and will not have to pay any royalties. The Act permits, under specified conditions, the performance and display of reasonable and limited portions of any copyrighted work in amounts comparable to what is typically displayed during live classroom sessions. It also allows the display and performance of all types of materials, and explicitly includes performances of non-dramatic literary and musical works. However, the materials must be presented as an integral part of a course of instruction and not for entertainment purposes. In addition, any copyrighted materials utilized in distance education must be transmitted over secure lines. These transmissions also must be limited to enrolled students, and technical controls must be utilized to limit the dissemination of the work.

Commercially-prepared educational materials are protected by excluding from the exemption any works that are produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or performances. Also excluded are displays that are given by means of a copy or phonorecord that was not lawfully made and acquired and where the transmitting government body or accredited nonprofit educational institution knew or had reasons to believe that the copy was not lawfully made and acquired.

The number of copies of copyrighted works must be limited. In addition, the Act does not broadly authorize the conversion of print or other analog versions of works into digital formats, allowing the digitizing of analog works only under specified circumstances. It does exempt

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governmental bodies and accredited nonprofit educational institutions from liability for infringement resulting from the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material. It also extends the present ephemeral recording exemption, under specified conditions, to copies or phonorecords embodying a performance or display in digital and analog form for use in making transmissions authorized by the Act.

In order to benefit from the provision of the Act, the governmental body or accredited nonprofit education institution must "institute policies regarding copyright," although it does not specify what such a policy might contain. It also requires that students be provided with informational materials regarding copyright, and that they be notified that the presented materials may be subject to copyright protection.

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HeinOnline -- 2004 Technology, Education, and Copyright Harmonization Act of 2002: A Legislative History [vi] 2004