

Appendix 1. Copyright Issues

Other issues associated with distributed education are process-related concerns regarding the creation and protection of intellectual capital. Faculty members must understand the copyright issues involved in both the creation and delivery of distance education coursework.

Attention to copyright laws is needed for written materials. The process of videotaping live lectures for distance education students brings up issues relating to broadcasting rules and rights. The foundation of copyright law in the United States is the Copyright Act of 1976. For years, distance education was hampered by rules allowing traditional classrooms greater freedom in the display of material and performances than was possible through distance transmission. Specifically, section 110 (1) (sometimes called the 'classroom exemption'), allows an absolute exemption to copyright if the following provisions are met: 1) occurs in a non-profit educational institution; 2) face-to-face instruction; 3) occurs in a place devoted to instruction (classroom or laboratory); and 4) if the work is an audiovisual work, the copy must have been made legally.¹²³ Section 110 (2) which dealt with instructional transmission placed several restrictions on the faculty such as performances were limited to non-dramatic literary and musical works and similar to Section 110 (1) that the place of reception be a location normally devoted to instruction.

The recent passage of the TEACH (Technology, Education, and Copyright Harmonization) Act has leveled the playing field between distance and traditional education. The TEACH Act amended section 110 (2) by expanding the categories of works that could be displayed, removing the concept of where the material is received, allowing institutions to digitize works where digital versions do not exist, and allowing institutions to store the material on a protected server for asynchronous display. The TEACH Act does not provide for an absolute exemption as does section 110 (1) and the display of material is restricted to "reasonable and limited portions."¹²³

In addition to the added freedom afforded by the TEACH Act, instructors can also fall back upon the Fair Use section 107 of the Copyright Act of 1976. Section 107 states that the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or any other means specified by that section for purposes such as criticism, comment, news reporting, teaching, scholarship or research, is not an infringement of copyright. The fair use doctrine is not absolute and the courts use four criteria to determine whether a use is fair. The four criteria are:

- 1) purpose and character of the use
- 2) nature of the copyright work
- 3) amount or substantiality of the portion used
- 4) effect on the market for the work by its use

Non-profit educational institutions are usually viewed favorably when applying the first criteria pertaining to intent. While not an absolute rule, courts typically consider up to 10 percent of the amount or portion as reasonable.¹²⁴