

# Distance Education, Intellectual Property and the DMCA

A Primer for Distance Faculty & Corporate Distance  
Instructors



Let's begin with terminology...

# Why Specify **Distance** Education?

Distance Education (DE) is:

- a mode of education geared toward the adult learner
- a learning environment where teacher and student are separated by space and time
- “teaching that is **dependent** on technology [emphasis mine]”
- a learning environment where the sharing of **intellectual property** is anticipated to be in electronic formats



# Terminology: Intellectual Property

Intellectual Property includes:

- literary works
- musical works, including accompanying words
- dramatic works, including accompanying music
- pantomimes and choreographic works
- pictorial, graphic and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

Intellectual property is protected by **copyright law**

# Terminology: Copyright Law

“**Copyright** is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work.”

Reference: Wikipedia: Copyright, 2010

Copyright ownership:

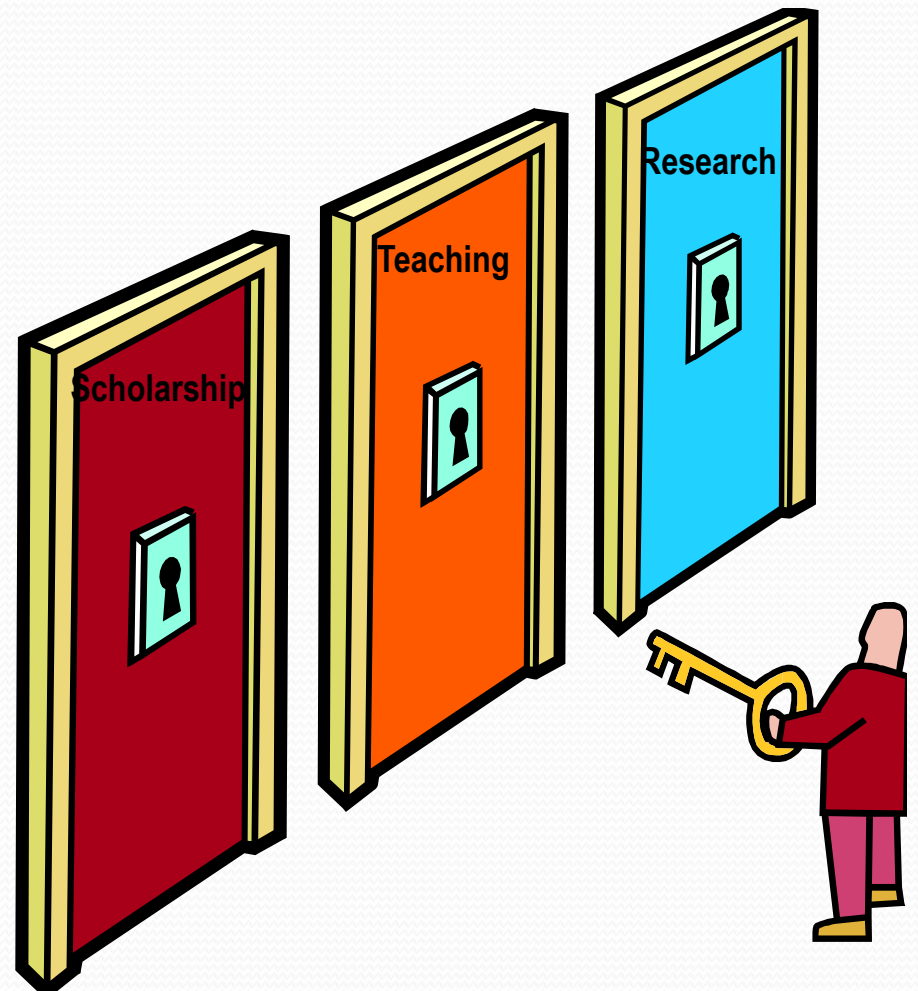
- can be transferred
- lasts for a specific amount of time
- is immediate
- allows for “**Fair Use**”

Reference: CIPH, 2010

# Terminology: Fair Use

- Limits the absolute rights of the copyright owner for “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research”

Reference: CIPH, 2010





So what changed?

# Unauthorized Digital Duplication

- The Internet made it easier to duplicate and share copyrighted materials with anyone and everyone who had Internet access.
- Thus, “Congress concluded that legislation was needed to strengthen legal protections against the potential for massive digital piracy and enacted the **DMCA**.”



Reference: CIPH, 2010



# What is the Digital Millennium Copyright Act (DMCA)?



The DMCA is a copyright law that

- “criminalizes production and dissemination of technology, devices, or services intended to circumvent measures (commonly known as **digital rights management or DRM**) that control access to copyrighted works. It also criminalizes the act of circumventing an access control, whether or not there is actual infringement of copyright itself.”

Reference: Wikipedia: DMCA, 2010

# Protection & Prevention

- **Digital Rights Management**, specifically **technological protection measures (TPM)**, have made it possible to both protect and prevent the uses for and of intellectual property.





# Terminology: DRM & TPM

- “Digital Rights Management (DRM) is commonly defined as the set of technological protection measures (TPM) by which rights holders prevent the use of digital content they license in ways that could compromise the commercial value of their products.”

- Reference: Kasproski, 2010



How are Protection and Prevention problematic?

# The DMCA is outpacing Fair Use

## Current State

Copyright Law



Fair Use



## Key Question

- How does a distance educator, dependent on technology, navigate this inhospitable environment and **support** their use of educational materials in their distance course environments?



# Permission, Exemptions and the TEACH Act

Currently, there are no solid Fair Use supports for DE in the spirit of the original law, especially given that DE instructors rely on technology to communicate and share information.

Some options for DE instructors include:

- Requesting permission from the owner
- Seeking exemptions for classroom use

Another option that challenges both educators and institutions is

- Relying on **the TEACH Act** to protect and support distance education educators and instructors



## A Response to the DMCA: The TEACH Act Amendment

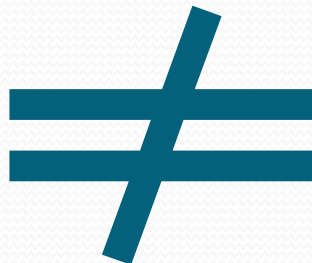
- The Technology, Education, and Copyright Harmonization or TEACH Act (2002), designed to clarify the options available for the use of materials in distance education classrooms, is not an automatic DMCA fix.
- Some **concerns** include the lack of Fair Use support and the requirements imposed on institutions.

• Reference: Strickland, 2004, CIPH, 2010

## Primary Concerns about the TEACH Act

- definitions are based on terminology and practices taken from face-to-face class environments
- institutions have the responsibility of enforcing and regulating electronic use that may result in costly changes to current systems and structures
- f2f instruction still has greater fair use freedom when using materials for instruction
- improvements to the law were intended, but are mitigated by the requirements of the law

Distance Education



Mediated Class Session

Reference: CIPH, 2010





With what we now know, what is the impact on DE and IP?

# The DMCA Impact on IP & DE

## Intellectual Property

- Copyright ownership is absolute
- Electronic IP is aggressively protected
- Preventive measures are in place to subvert unlawful copying and sharing
- A foundation for litigation has been established

## Distance Education

- Fair Use is not practiced with the same spirit that is upheld in face-to-face environments, there are restrictions and there are limits
- Circumventing the technological protection measures being used in electronic media and sharing that media is potentially dangerous and infringing even within TEACH Act parameters



So what should a faculty distance educator or a corporate distance instructor do?

## Next Steps

- **Know** the laws regarding the use of intellectual property in DE courses and course environments
- **Review** the policies & procedures regarding the use of intellectual property in learning management systems and distance courses for your organization
- If your institution is operating under the TEACH Act's guidelines and restrictions, take time to **understand** how material is protected and how it is intended to be shared with students
- **Alert** students that materials may be copyrighted and that they should seek assistance whenever they have questions about how material can be used
- **Stay on top** of the research, scholarship and advocacy groups who are addressing the limits imposed by the DMCA
- **Pay attention** to cases where instructors seek exemptions
- **Document** your experience with the DMCA, the tools used to support anti-circumvention (DRM and TPM) and the amendments (the TEACH Act), your voice may facilitate change



# Final Thoughts



The DMCA's impact on DE and IP is one that will continue to challenge educators because:

- The primary goal is not to promote learning, but to protect the commercial rights of intellectual property owners.
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Ultimately, distance educators & instructors are negatively impacted by copyright laws and amendments that

1. Limit their access to historical fair use,
2. Restrict their ability to “share” electronic material in technology dependent settings, and
3. Excessively favor copyright owners





# Helpful Links

Copyright Law

<http://www.copyright.gov/title17/>

DMCA

[http://en.wikipedia.org/wiki/Digital\\_Millennium\\_Copyright\\_Act](http://en.wikipedia.org/wiki/Digital_Millennium_Copyright_Act)

The TEACH Act

<http://www.copyright.com/media/pdfs/CR-Teach-Act.pdf>

Exemptions

<http://www.asc.upenn.edu/DMCA/>

Copy links and paste for best results

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