

# EMERGING ISSUE OF REGULATION FOR ONLINE EDUCATION

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## ABSTRACT

*The issue of laws and regulations lead to the quality of online education. Frydenberg (4) contends that a major source of regulation in the United States is the regional accreditation agencies for higher education. The regional accreditation agencies are charged with setting standards of quality practice and to guide toward achieving those standards. These standards must meet the state and federal laws. As online education continues to evolve, new laws and regulations are being developed, most recent being the Technology, Education, and Copyright Harmonization Act (TEACH Act).*

**Keywords:** Online education, laws, regulations, quality

## INTRODUCTION

The Internet has provided a new medium for developers of online courses and degree programs. This online educational environment is offering an alternative option for students that desire continuous, lifelong learning and more flexible and convenient learning. An array of resources made available for online courses include text, pictures, videos, databases, and archives (8). These tools have lead to an increase in the number of universities offering online courses and degrees.

Because the issue of quality is a concern, issues such as copyright laws and regulatory and legal compliance need to be re-evaluated as they apply to online education. For the purpose of this paper, current literature on how current and emerging regulations and laws such as the Digital Millennium Copyright Act of 1998 or more recently the Technology, Education, and Copyright Harmonization Act (TEACH Act) have an affect on online education will be discussed.

### **Regulatory and Legal Compliance Issues**

Frydenberg (4) lists a major source of regulation for education in the United States as the regional accreditation agencies for higher education. The regional accreditation agencies are charged with setting standards of quality practice and providing guidance in achieving those standards. These standards must meet the state and federal laws. As an example, the Western Interstate Commission for Higher Education (as cited in 4) has stated their first benchmark:

The institution seeks to understand the legal and regulatory requirements of the jurisdictions in which it operates, e.g. requirements for service to those with disabilities, copyright law, state and national requirements for institutions offering educational programs, international restrictions such as export of sensitive information or technologies. (p. 5)

Although this benchmark provides an idea of how the regional accreditation associations provide standards, higher education institutions are now dealing with a new delivery methodology with online courses and programs. These institutions are anxious to have their programs accredited; however, the benchmarks need to be re-evaluated to identify how online programs fit. Sally Johnstone (1) reacts to concerns over quality online programs by agreeing that it is difficult to know if traditional accrediting standards mean much in regard to online because everything is changing so quickly. Jamie Merisotis, president of the Institute for Higher Education Policy, maintains that although changes need to be made in higher education in the age of the Internet, the accreditors don't yet know what direction the changes should take (1). Contrary to Johnstone and Merisotis, Steven Crow, executive director of the North Central Association of Colleges and Schools, suggests as long as students are attentive and institutions are responsible, accrediting standards don't need drastic changes (1).

### **Copyright Laws**

As information continues to become more prevalent and technology continues to emerge in higher education, copyright is a concern. Although the history of copyright in the United States began with the U.S. Constitution in 1787, the most significant statutory guidance to securing an exclusive right to writings began with the Copyright Act of 1976, 17 U.S.C. sec. 101 et seq. (3 and 7). The revision of the original act was based on technological developments and their impact on what might be copyrighted, how works might be copied, what constituted an infringement, and to bring the United States in accordance with the international copyright law, practices, and policies (7).

The 1976 U.S. Copyright Act covers the following areas: scope and subject matter of works covered, exclusive rights, copyright term, copyright notice and copyright registration, copyright infringement, fair use and defenses, and remedies to infringement. Additionally, the copyright act was extended to include unpublished works (7). These revisions to the act are especially important to libraries because they state the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. Because "fair use" can be interpreted differently, Masciola (7) suggests that the following four factors should be considered when determining whether the intent of "fair use" is met: (a) purpose and character of the use, (b) nature of the copyrighted work, (c) the amount and substantiality of the portion used in relation to the whole, and (d) the effect of the use on the potential market.

### **The Digital Millennium Copyright Act (1998)**

Because the copyright law became progressively ineffective for the needs of emerging technologies, President Clinton signed the Digital Millennium Copyright Act into law in October, 1998 (3). The UCLA Online Institute for Cyberspace Law and Policy summarizes the Digital Millennium Copyright Act as: (a) anti-piracy measures built into most commercial software, (b) outlaw devices used to illegally copy software, (c) provide exemptions for nonprofit libraries, archives, and educational institutions under certain circumstances, (d) limit Internet service providers from copyright infringement liability for simply transmitting

information over the Internet, (e) limit liability of nonprofit institutions of higher education for copyright infringement by faculty members or graduate students, (f) webcasters must pay licensing fees to record companies, and (g) Register of Copyrights submit to Congress recommendation regarding how to promote distance education through digital technologies while maintaining a balance between rights of copyright owners and the needs of the students.

Casey Lide (6) suggests that the section 512(e) of the Digital Millennium Copyright Act specifically addresses how the actions of faculty and graduate students no longer affect a nonprofit educational institution under new provisions. Lide interprets this section as “the faculty member or student shall be considered a ‘person other than the provider,’ so as to avoid disqualifying the institution from eligibility (p.3).” An online faculty member or student therefore is responsible for copyright issues rather than the non-profit educational institution as long as three conditions are not exceeded. According to the U.S. Copyright Office Summary, these conditions include (a) the faculty member or graduate student’s infringing activities do not involve providing access to course materials that were required or recommended during the past three years, (b) the institution has not received more than two notifications over the past three years that the faculty member or graduate student was infringing, (c) the institution provides all of its users with informational materials describing and promoting compliance with copyright law (6).

### **The TEACH Act**

The TEACH Act was passed as a result of the recommendation presented by the Register of Copyrights (9). This Act is legislation to address copyright issues for distance education. The Register of Copyrights in 1999, Marybeth Peters, presented recommendations for clarification to be included in the TEACH Act. The four major sections of the Register’s recommendations pertain to statutory language, clarification of “fair use” and specifically how it relates to distance education, licensing issues as they pertain to online licensing systems and technological measures, and how international considerations apply to distance education (9).

The TEACH Act has brought copyright privileges for distance education closer to those of the face-to-face environment, but there are still some distinct differences between the two (5). For example, an educator may show or perform any work related to the curriculum, regardless of the medium, in a face-to-face environment. The medium can include still images, music, and movies. No limits exist and no permission is required. Harper explains that under section 110(2), even as revised and expanded, the same educator in an online environment would have to pare down some of those materials to show them to distant students. The audiovisual works and dramatic musical works may only be shown as clips in “reasonable and limited portions.” Additionally, not everyone, nor every work, is covered. Section 110(2) only applies to accredited nonprofit educational institutions (5). So, although the changes as a result of the TEACH Act are an improvement for distance education, disparity continues between the distance education and face-to-face environment.

## CONCLUSION

As changes in technology continue to affect higher education by delivery methodology and resource accessibility, the issue of quality education should continue to be analyzed and changes or new implementations should be considered to provide current guidance for administrators of online education. Laws are slowly addressing copyright issues for education at a distance. As new or revised laws, regulations, and policies are created, the information must be shared with faculty and students.

Although most revisions for copyright laws and the creation of new acts would be considered reactive rather than proactive, the laws continue to change to address the needs for the identified stakeholders. Evaluation and considerations for additional revisions of the copyright laws will continue to take place and improve to be effective for the current needs of our society.

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