HEINONLINE

Citation: 2004 Technology Education and Copyright Harmonization of 2002 A Legislative History S 2009 2004

Content downloaded/printed from
HeinOnline (http://heinonline.org)
Mon Apr 22 10:43:32 2013

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

SEC. 4. IMPLEMENTATION BY COPYRIGHT OFFICE.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall conduct a study and submit a report to Congress on the status of—

(1) licensing by private and public educational institutions of copyrighted works for digital distance education programs, including—

(A) live interactive distance learning classes;

(B) faculty instruction recorded without students present for later transmission; and

(C) asynchronous delivery of distance learning over computer networks; and

(2) the use of copyrighted works in such programs.

(b) CONFERENCE.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall—

(1) convene a conference of interested parties, including representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and section 110 (1) and (2) of title 17, United States Code;

(2) to the extent the Copyright Office determines appropriate, submit to the Committees on the Judiciary of the Senate and the House of Representatives such guidelines, along with information on the organizations, Government agencies, and institutions participating in the guideline development and endorsing the guidelines; and

(3) post such guidelines on an Internet website for educators, copyright owners, libraries, and other interested persons.

SECTION-BY-SECTION ANALYSIS OF THE TECHNOLOGY, EDUCATION, AND COPYRIGHT HARMONIZATION ACT

SECTION 1. SHORT TITLE

This bill may be cited as the "Technology, Education And Copyright Harmonization Act of 2001" or the TEACH Act.

SECTION 2. EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES

The bill updates section 110(2) to allow the similar activities to take place using digital delivery mechanisms that were permitted under the basic policy balance struck in 1976, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. Current law allows performances and displays of all categories of copyrighted works in classroom settings, under section 110(1) of the Copyright Act, and allows performances of nondramatic literary and musical works and displays of works during certain education-related transmissions (usually television-type transmission) under Section 110(2). Section 110(2) is amended to allow performances of categories of copyrighted works—such as portions of audiovisual works, sound recordings and dramatic literary and musical works—in addition to the non-dramatic literary and musical works that may be performed under current law. Because of the potential adverse effect on the secondary markets of such works, only reasonable and limited portions of these additional works may be performed under the exemption. Excluded from the exemption are those works that are produced primarily from instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. As an additional safeguard, this provision requires the exempted performance or display to be made from a lawful copy. Since digital transmissions implicate the reproduction and distribution rights in addition to the public performance right, section 110(2) is further amended to add coverage of the rights of reproduction/and or distribution, but only to the extent technologically required in order to transmit a performance or display authorized by the exemption.

Section 110(2)(C) eliminates the requirement of a physical classroom by permitting transmissions to be made to students officially enrolled in the course and to government employees, regardless of their physical location. In lieu of this limitation two safeguards have been added. First, section 110(2)(A) emphasizes the concept of mediated instruction by ensuring that the exempted performance or display is analogous to the type of performance or display that would take place in a live classroom setting. Second, section 110(2)(C) adds the requirement that, to the extent technologically feasible, the transmission must be made solely for reception by the defined class of eligible recipients.

Sections 110(2)(D), (E)(I) and (E)(II) add new safeguards to counteract the new risks posed by the transmission of works to students in digital form. Paragraph (D) requires that transient copies permitted under the exemption be retained no longer than reasonably necessary to complete the transmission. Paragraph (E)(I) requires that beneficiaries of the exemption institute policies regarding copyright; provide information materials to faculty, students, and relevant staff members that accurately describe and promote compliance with copyright law; and provide notice to students that materials may be subject to copyright protection. Paragraph 110(2)(E)(II) requires that the transmitting organization apply measures to protect against both unauthorized access and unauthorized dissemination after access has been obtained. This provision also specifies that the transmitting body or institution may not intentionally interfere with protections applied by the copyright owners themselves.

SECTION 3. EPHEMERAL RECORDINGS

Section 112 is amended by adding a new subsection which permits an educator to upload a copyrighted work onto a server to facilitate transmissions permitted under section 110(2) to students enrolled in his or her course. Limitations have been imposed upon the exemption similar to those set out in other subsections of section 112. Paragraph 112(f)(1) specifies that any such copy be retained and used solely by the entity that made it and that no further copies be reproduced from it except the transient copies permitted under section 110(2). Paragraph 112(f)(2) requires that the copy be used solely for transmissions authorized under section 110(2). Paragraph 112(f)(3) prohibits a body or institution from intentionally interfering with technological protection measures used by the copyright owner to protect the work.

SECTION 4. IMPLEMENTATION BY COPYRIGHT OFFICE

Subsection (a) requires the Copyright Office, not later than 2 years after the date of the enactment, to conduct a study and submit a report to Congress on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs. Subsection (b) requires the Copyright Office, not later than 2 years after the date of enactment, to convene a conference of other interested parties on the subject of the use of copyrighted works in education and, to the extent the Office deems appropriate, develop guidelines for the clarification of the appropriate use of copyrighted works in educational settings, including distance education, for submission to Congress and for posting on the Copyright Office website as a reference resource.

Mr. LEAHY. Mr. President, an important responsibility of the Senate Judiciary Committee is fulfilling the mandate set forth in Article 1, section 8 of the Constitution, "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Chairman HATCH and I, and other colleagues on the Judiciary Committee, have worked together successfully over the years to update and make necessary adjustments to our copyright, patent and trademark laws to carry out this responsibility. We have strived to do so in a manner that advances the rights of intellectual property owners while protecting the important interests of users of the creative works that make our culture a vibrant force in this global economy.

Several years ago, as part of the Digital Millennium Copyright Act, DMCA, we asked the Copyright Office to perform a study of the complex copyright issues involved in distance education and to make recommendations to us for any legislative changes. In conducting that study, Maybeth Peters, the Registrar of Copyrights met informally with interested Vermonters at Champlain College in Burlington, Vermont, to hear their concerns on this issue. Champlain College has been offering on-line distance learning programs since 1993, with a number of on-line programs, including for degrees in accounting, business, and hotel-restaurant management.

The Copyright Office released its report in May, 1999, at a hearing held in this Committee, and made valuable suggestions on how modest changes in our copyright law could go a long way to foster the appropriate use of copyrighted works in valid distance learning activities. I am pleased to join Senator HATCH in introducing the Technology, Education and Copyright Harmonization, or TEACH, Act, that incorporates the legislative recommendations of that report. This legislation will help clarify the law and allow educators to use the same rich material in distance learning over the Internet that they are able to use in face-to-face classroom instruction.

The growth of distance learning is exploding, largely because it is responsive to the needs of older, non-traditional students. The Copyright Office, CO, report noted two years ago that, by 2002, the number of students taking distance education courses will represent 15 percent of all higher education students. Moreover, the typical average distance learning student is 34 years old, employed full-time and has previous college credit. More than half are women. In increasing numbers, students in other countries are benefitting from educational opportunities here through U.S. distance education programs.

In high schools, distance education makes advanced college placement and college equivalency courses available,

HeinOnline -- 2004 Technology, Education, and Copyright Harmonization Act of 2002: A Legislative History S 2009 2004

a great opportunity for residents in our more-rural states. In colleges, distance education makes lifelong learning a practical reality.

Not only does distance education make it more convenient for many students to pursue an education, for students who have full-time work commitments, who live in rural areas or in foreign countries, who have difficulty obtaining child or elder care, or who have physical disabilities, distance education may be the only means for them to pursue an education. These are the people with busy schedules who need the flexibility that on-line programs offer: virtual classrooms accessible when the student is ready, and free, to log-on.

In Vermont and many other rural states, distance learning is a critical component of any quality educational and economic development system. In fact, the most recent Vermont Telecommunications Plan, which was published in 1999 and is updated at regular intervals, identifies distance learning as being critical to Vermont's development. It also recommends that Vermont consider "using its purchasing power to accelerate the introduction of new [distance learning] services in Vermont." Technology has empowered individuals in the most remote communities to have access to the knowledge and skills necessary to improve their education and ensure they are competitive for jobs in the 21st century.

Several years ago, I was proud to work with the state in establishing the Vermont Interactive Television network. This constant two-way videoconferencing system can reach communities, schools and businesses in every corner of the State. Since we first successfully secured funds to build the backbone of the system, Vermont has constructed fourteen sites. The VIT system is currently running at full capacity and has demonstrated that in Vermont, technology highways are just as important as our transportation highways.

No one single technology should be the platform for distance learning. In Vermont, creative uses of available resources have put in place a distance learning system that employees T-1 lines in some areas and traditional internet modem hook-ups in others. Several years ago, the Grand Isle Supervisory Union received a grant from the U.S. Department of Agriculture to link all the schools within the district with fiber optic cable. There are not a lot of students in this Supervisory Union but these is a lot of land separating one school from another. The bandwidth created by the fiber optic cables has not only improved the educational opportunities in the four Grand Isle towns, but it has also provided a vital economic boost to the area's business.

While there are wonderful examples of the use of distance learning inside Vermont, the opportunities provided by these technologies are not limited to the borders of one state, or even one country. Champlain College, a small school in Burlington, Vermont has shown this is true when it adopted a strategic plan to provide distance learning for students throughout the world. Under the leadership of President Roger Perry, Champlain College now has more students enrolled than any other college in Vermont. The campus in Vermont has not been overwhelmed with the increase. Instead, Champlain now teaches a large number of students overseas through its on-line curriculum. Similarly, Marlboro College in Marlboro, Vermont, offers innovative graduate programs designed for working professionals with classes that meet not only in person but also on-line.

The Internet, with its interactive, multi-media capabilities, has been a significant development for distance learning. By contrast to the traditional, passive approach of distance learning where a student located remotely from a classroom was able to watch a lecture being broadcast at a fixed time over the air, distance learners today can participate in real-time class discussions, or in simultaneous multimedia projects. The Copyright Office report confirms what I have assumed for some time—that "the computer is the most versatile of distance education instruments," not just in terms of flexible schedules, but also in terms of the material available.

Over twenty years ago, the Congress recognized the potential of broadcast and cable technology to supplement classroom teaching, and to bring the classroom to those who, because of their disabilities or other special circumstances, are unable to attend classes. At the same time, Congress also recognized the potential for unauthorized transmissions of works to harm the markets for educational uses of copyrighted materials. The present Copyright Act strikes a careful balance and includes two narrowly crafted exemptions for distance learning, in addition to the general fair use exemption.

Under current law, the performance or display of any work in the course of face-to-face instruction in a classroom is exempt from the exclusive rights of a copyright owner. In addition, the copyright law allows transmission of certain performances or displays of copyrighted works to be sent to a classroom or a similar place which is normally devoted to instruction, to persons whose disabilities or other special circumstances prevent classroom attendance, or to government employees. While this exemption is technology neutral and does not limit authorized "transmissions" to distance learning broadcasts, the exemption does not authorize the reproduction or distribution of copyrighted works—a limitation that has enormous implications for transmissions over computer networks. Digital transmissions over computer networks involve multiple acts of reproduction as a data packet is moved from one computer to another.

The need to update our copyright law to address new developments in online distance learning was highlighted in the December, 2000 report of the Web-Based Education Commission, headed by former Senator Bob Kerrey. This Commission noted that:

> Current copyright law governing distance education ... was based on broadcast models of telecourses for distance education. That law was not established with the virtual classroom in mind, nor does it resolve emerging issues of multimedia online, or provide a framework for permitting digital transmissions.

This report further observed that "This current state of affairs is confusing and frustrating for educators. ... Concern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool." In conclusion, the report concluded that our copyright laws were "inappropriately restrictive."

The TEACH Act makes three significant expansions in the distance learning exemption in our copyright law, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. First, the bill eliminates the current eligibility requirements for the distance learning exemption that the instruction occur in a physical classroom or that special circumstances prevent the attendance of students in the classroom.

Second, the bill clarifies that the distance learning exemption covers the temporary copies necessarily made in networked servers in the course of transmitting material over the Internet.

Third, the current distance learning exemption only permits the transmission of the performance of "nondramatic literary or musical works," but does not allow the transmission of movies or videotapes, or the performance of plays. The Kerrey Commission report cited this limitation as an obstacle to distance learning in current copyright law and noted the following examples: A music instructor may play songs and other pieces of music in a classroom, but must seek permission from copyright holders in order to incorporate these works into an online version of the same class. A children's literature instructor may routinely display illustrations from childrens' books in the classroom, but must get licenses for each one for on online version of the course.

To alleviate this disparity, the TEACH Act would amend current law to allow educators to show limited portions of dramatic literary and musical works, audiovisual works, and sound recordings, in addition to the complete versions of nondramatic literary and musical works which are currently exempted.

This legislation is a balanced proposal that expands the educational use

HeinOnline -- 2004 Technology, Education, and Copyright Harmonization Act of 2002: A Legislative History S 2010 2004

exemption in the copyright law for distance learning, but also contains a number of safeguards for copyright owners. In particular, the bill excludes from the exemption those works that are produced primarily for instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. Indeed, the Web-Based Education Commission urged the development of "high quality online educational content that meets the highest standards of educational excellence." Copyright protection can help provide the incentive for the development of such content.

In addition, the bill requires the use by distance educators of technological safeguards to ensure that the dissemination of material covered under the exemption is limited only to the students who are intended to receive it.

Finally, the TEACH Act directs the Copyright Office to conduct a study on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs, and to convene a conference to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and the educational use exemptions in the copyright law. Both the Copyright Office report and the Kerrey Commission noted dissatisfaction with the licensing process for digital copyrighted works. According to the Copyright Office, many educational institutions "describe having experienced recurrent problems [that] . . . can be broken down into three categories: difficulty locating the copyright owner; inability to obtain a timely response; and unreasonable prices for other terms." Similarly, the Kerrey Commission report echoed the same concern. A study focusing on these licensing issues will hopefully prove fruitful and constructive for both publishers and educational institutions.

The Kerrey Commission report observed that "[c]oncern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool." For this reason, the Kerrey Commission report endorsed "the U.S. Copyright Office proposal to convene education representatives and publisher stakeholders in order to build greater consensus and understanding of the 'fair use' doctrine and its application in web-based education. The goal should be agreement on guidelines for the appropriate digital use of information and consensus on the licensing of content not covered by the fair use doctrine." The TEACH Act will provide the impetus for this process to begin.

I appreciate that, generally speaking, copyright owners believe that current copyright laws are adequate to enable and foster legitimate distance learning activities. As the Copyright Office report noted, copyright owners are concerned that "broadening the exemption would result in the loss of opportunities to license works for use in digital distance education" and would increase the "risk of unauthorized downstream uses of their works posed by digital technology." Based upon its review of distance learning, however, the Copyright Office concluded that updating section 110(2) in the manner proposed in the TEACH Act is "advisable." I agree. At the same time we have made efforts to address the valid concerns of both the copyright owners and the educational and library community, and look forward to working with all interested stakeholders as this legislation is considered by the Judiciary Committee and the Congress.

Distance education is an important issue to both the chairman and to me, and to the people of our States. I commend him for scheduling a hearing on this important legislation for next week.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 45—HONORING THE MEN AND WOMEN WHO SERVE THIS COUNTRY IN THE NATIONAL GUARD AND EXPRESSING CONDOLENCES OF THE UNITED STATES SENATE TO FAMILY AND FRIENDS OF THE 21 NATIONAL GUARDSMEN WHO PERISHED IN THE CRASH ON MARCH 3, 2001

Mr. BOND (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 45

Whereas on March 3, 2001, a tragic crash of a C-23 from the 171st Aviation Battalion of the Florida Army National Guard, carrying guardsmen from the 203rd Red Horse Unit of the Virginia Air National Guard took the lives of 21 guardsmen;

Whereas this unfortunate crash occurred during a routine training mission;

Whereas the National Guard is present in every state and four protectorates and is comprised of citizen-soldiers and airmen who continually support our active forces;

Whereas members of the Tragedy Assistance Program for Survivors were on site the day of the accident and generously rendered assistance to family members and friends; and

Whereas this is a somber reminder of the fact that the men and women in the United States Armed Forces put their lives on the line every day to protect this great Nation and that each citizen should forever be grateful for the sacrifices made by these men and women; Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the contributions of the 21 National Guardsmen who made the ultimate sacrifice to their Nation on March 3, 2001;

(2) expresses deep and heartfelt condolences to the families and friends of the crash victims for this tragic loss;

(3) expresses appreciation for the members of the Tragedy Assistance Program for Survivors for their continued support to surviving family members; and

(4) honors the men and women who serve this country through the National Guard and is grateful for everything that each guardsman gives to protect the United States of America.

Mr. LEAHY. Mr. President, sadly, I rise today to talk about the recent crash of a National Guard aircraft in flying over Georgia. Last Friday, 21 members of the National Guard lost their lives in a horrible plane crash. How does one understand the death of 21 soldiers and airmen who dedicated their time and energy to contribute to our nation's defense?

While there perhaps is no easy answer to this question, the patriotism and dedication of these men is without doubt. Nineteen served with the Virginia Air National Guard in the 203d Red Horse Unit. Three were of the 171st Aviation Battalion of the Florida Army National Guard. All come from a proud citizen-soldier tradition that dates back to the War of Independence.

This was a routine mission for the fated C–23 Sherpa. With the Florida Guardsmen at the controls, the plane took off on Friday morning, headed for Virginia. Its passengers had just completed their two-weeks of annual training in Georgia, where they had honed their already refined construction abilities. They were heading back to their families and the civilian jobs. Alas, those reunions were never to occur.

It is a great loss whenever a member of the armed services gives his or her life in the lien of duty. But perhaps because these men came straight out of local communities, because they were juggling the demands of work and family along with their national service, we feel the losses like these especially deeply. Their departure reminds us that our friends, colleagues, and neighbors in the National Guard make sacrifices every time they report for duty. They leave the comfort of their homes for the rigors of service. It is a sacrifice that is worthy of honor and recognition, but often goes unnoticed until they make the ultimate sacrifice.

With that in mind, I join with my colleague Senator KIT BOND in introducing a resolution that honors their service and expresses our heartfelt condolences to the families of the victims.

SENATE RESOLUTION 46—AUTHORIZING EXPENDITURES BY THE SENATE COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL submitted the following resolution; from the Committee on Indian Affairs; which was referred to the Committee on Rules and Administration:

S. RES. 46

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, and making investigations as authorized by paragraphs 1 and

HeinOnline -- 2004 Technology, Education, and Copyright Harmonization Act of 2002: A Legislative History S 2011 2004

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

DOCUMENT NOS. 8–9

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

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