



Copyright Guidance for Distance Learning

Copyright Considerations for Music Educators During Distance Learning

The Copyright Act of 1976 adopted language acknowledging that certain [education exemptions](#) are warranted to allow certain uses of copyrighted material in a classroom setting.

The basic exemption for distance education was originally enacted as part of the Copyright Act of 1976 to permit performances and displays of copyrighted works for distance education instruction without a need to obtain a license or rely on fair use. As it relates to educational exemptions in copyright law, the terms “performances and displays” refer to actions taken in the physical or virtual classroom. These terms do not refer to public performances of works protected by copyright and requiring permission of the copyright holder.

Understanding the need to update distance learning exemptions in a digital world, Congress passed, and the President enacted, the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002.

The TEACH Act and Expanded Works in Distance Education

Performing or displaying copyrighted materials during face-to-face teaching activities are exempted from copyright infringement per [17 U.S.C. Section 110](#). Thus, a musical work that is legally obtained may be displayed or performed as a part of classroom learning. The exemption only applies for courses in accredited, nonprofit educational institutions, which generally includes elementary and secondary schools.

The TEACH Act sought to extend a similar exemption to distance learning. Transmission of materials must be made solely for and, to the extent “technologically feasible,” limited to enrolled students.

Works permitted to be used for digital transmission during distance learning include:

- Performances of nondramatic literary or musical works.
- Dramatic performances, such as operas, music videos and musicals can only be used in “non-performable” units. Performing or displaying such works in their entirety is not permitted.
- Any other work, if only reasonable and limited portions of the performance are used.

- Displays of any work comparable to the use typical in face-to-face displays.

Any display or performance must be:

- Directly related and of material assistance to the teaching content of the transmission.
- Made either by an instructor, at the direction of an instructor, or under the actual supervision of an instructor.
- Offered as a regular part of the systematic mediated instructional activities.
- Should not be accessible to the student any longer than the class session.

The TEACH Act directs the transmitting institution (school) to create policies regarding copyright. These policies should provide informational materials that accurately describe and promote compliance with U.S. Copyright Law and give notice to students that materials in use may be subject to copyright protection.

If the institution uses digital transmissions in distance learning, it must reasonably prevent both access to the work longer than the class session and unauthorized dissemination of the work to others (see FAQs for more information). Although institutions must ensure that these two concerns are addressed, they have discretion over the manner of implementation.

How Does the TEACH Act Help with Virtual Music Education During the Covid-19 Pandemic?

The TEACH Act permits performance or display of a musical work during distance learning comparable to that which is typically displayed during a live classroom session. So, while virtual learning is a new way of teaching for many, some similar rules apply for copyrighted materials:

- If a work was not purchased, then you should not use it.
- Only distribute materials to students for whom you have paid for the materials.
- Just because a work is available online and free does not mean that work is a legal copy.

General guidance for distance learning:

- You may replicate purchased physical or digital products that you have purchased for whole class instruction.
- Digital usage of purchased physical products is permitted provided you control the distribution to only the same students for whom you have purchased the physical product. Digital distribution cannot replace purchasing music, but you may distribute purchased music digitally.
- If a digital version of the work is already available, then an analog copy cannot be converted for educational use.
- Demonstration recordings, rehearsal tracks, and student recordings may be created and distributed provided you control the distribution to only the students registered for the class.

- Use of purchased sheet music examples in online learning videos is permitted when used as an extension of whole class instruction. Videos should only be available to your class and not shared with others.
- Any digitization of physical materials should include the relevant copyright information. Always inform students about the proper way to handle copyrighted works transmitted to them.
- A work produced or marketed primarily for performance or display as part of mediated instructional activities via digital networks is not covered.

Frequently Asked Questions

Question: What kinds of educational institutions are addressed by the TEACH Act?

Answer: The copyright exemptions found in the TEACH Act only apply for courses in accredited, nonprofit educational institutions. This covers most public schools and universities and incorporated 501(c)3 nonprofit schools and universities, but not private or for-profit schools and universities.

Additionally, both K-12 and post-secondary education institutions have accreditation requirements to fall under TEACH Act exemptions. Elementary and secondary education institutions must be accredited by state certification and licensing procedures. Post-secondary education institutions must be accredited by an accrediting agency recognized by the Council of Higher Education Accreditation or the United States Department of Education.

Question: What constitutes “reasonable and limited”?

Answer: The statute does not define the term “reasonable and limited.” However, legislative history indicates that determining what amount of a work is permissible should consider the nature of the market for that type of work and the instructional purpose of the work. To this end, only use the most limited amount of the work possible that is an integral part of your instructional activities.

Question: Can I transmit sheet music to my students to work while engaged in distance learning?

Answer: Yes. The TEACH Act requires that transmissions must occur solely for students registered in the class. Materials should be transmitted to students in such a manner whereby a copy of the material may not be retained in any format. You can help ensure this by disabling downloading or printing options on the online sharing platform you use.

Question: What constitutes a “virtual classroom” or “class session?”

Answer: Virtual classrooms are not defined in copyright law, but copyright owners generally understand them to be closed, online learning platforms. These programs are only accessible to educators and students enrolled in and registered for the course. In copyright law, a class session refers to the period during which a student is logged in to the virtual classroom, whether for synchronous or asynchronous instruction. Work with your school administrators and IT department to ensure that your platforms are equipped with these restrictive features.

Question: Can I record my group and place the performance as an unlisted video on YouTube for my students to access and review?

Answer: No. All social media platforms are inherently shareable. Even with an unlisted video, you are unable to globally restrict access to what is posted online once you send the link out to your students. Unlisted videos are accessible by anyone who has the link. Place this content behind a sign-in wall where school credentials are required to view the content, thus preventing unauthorized viewers from accessing the content. Please seek additional guidance before allowing videos to be posted on social media platforms.

Question: Can I livestream a concert online?

Answer: Yes. However, the TEACH Act does not cover a concert or recital outside of the virtual classroom. To legally stream a performance, the school must possess the appropriate licenses from the Performance Rights Organization (PRO) who owns the performance rights for the work(s) performed. The main PROs are BMI, ASCAP, and SESAC. If you are livestreaming using a social media platform (YouTube, Facebook, Instagram, and Tik Tok), the platform may have performance rights licenses secured for live performances shared using their livestream service. While this would allow a user to livestream a performance without obtaining a license if the work performed is in the catalogue of the PRO with whom that social media platform has a license agreement, a user needs to independently verify such a license exists

However, even though performance licenses may cover livestreams, they do not cover recordings. This is important to keep in mind, as some livestreaming services automatically record the stream; this recording cannot be distributed without additional licenses. Please do your due diligence in verifying what licenses your social media platforms have and whether livestreams are automatically recorded.

Question: What permissions do I need to share recordings of my ensemble?

Answer: This varies depending on the particular performance. If the work is not in the public domain, you should contact the publisher or licensing agency who handles copyright permissions for the piece you plan to record. Be prepared to provide details on the elements of the recording such as an audio-only use or including a video component. If there is an intention for distribution and/or sales, this needs to be disclosed upfront with the copyright holder. In most cases, a mechanical license is required for audio recordings and a synchronization license is required to sync audio with video. You can make and retain one archival recording of a work without obtaining such licenses; this recording must not be shared with anyone.

Question: Can I have my students watch an archival recording of the ensembles last performance?

Answer: Yes, if the archival recording is only played for the students registered in the class. Distribution beyond this use is prohibited.

Question: Can displays or performances be evaluated at an online adjudicated event?

Answer: The TEACH Act does not cover online adjudicated events that are outside of the classroom. Any transmission of sheet music to the adjudicator would need to be purchased and deleted following the adjudication.

Question: Can displays or performances be used during other aspects of a virtual music education conference?

Answer: The event holder will need to seek certain permissions from the appropriate PRO to legally facilitate the performance of musical works. Similarly, any other portions of music education conferences and festivals need proper performance licensing. Some online platforms have already purchased a performance license, so you can contact the PRO or the platform's customer support for more details. Both NAFME and the NFHS have certain license agreements for organizational events; be sure to check with your state association for what permissions already exist.

Question: Does the TEACH Act's distance education exemption apply to both synchronous and asynchronous learning?

Answer: Yes. As long as the copyright protected works are restricted to students who are enrolled in the class and students are not able to distribute copies of the works, the works can be accessible outside of a scheduled meeting time for the class. It should be made clear that

students cannot retain access to the materials once they are no longer in the class or once the work is no longer relevant to the concepts being studied.

This guidance is educational and is not intended to be legal advice. Consult your legal counsel prior to taking any action.

References

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