



## Digital Copyright

### Background

In 1998, Congress enacted the Digital Millennium Copyright Act (DMCA), which updated U.S. copyright law for the digital age in ratification of the World Intellectual Property Organization (WIPO) treaties. Key among the topics included in the DMCA are provisions concerning the circumvention of copyright protection systems, fair use in a digital environment, and online service provider (OSP) liability (including details on safe harbors, damages, and “notice and takedown” practices). Many higher education institutions have taken advantage of the safe-harbor provisions of the DMCA, which extend copyright infringement liability exemptions for ISPs that provide a registered contact responsible for responding to copyright infringement complaints. In November 2001, President Bush signed into law the Technology, Education, and Copyright Harmonization Act (TEACH) Act. TEACH amends copyright law to allow nonprofit educational institutions to use the Internet to provide copyrighted material to registered students taking part in “mediated instructional activities.” Institutions using TEACH are required to educate their communities on U.S. copyright law and install “reasonable” technological protection measures to prevent the unauthorized retention and redistribution of copyrighted material.

Since passage of the DMCA and TEACH, the rapid evolution and use of peer-to-peer networks have facilitated the unauthorized access and distribution of copyrighted works. Congress has not followed through on threats to introduce legislation that would mandate technical remedies for content providers to shut down suspected copyright infringers; however, legislation introduced by Senator Orrin Hatch (R-Ut) last year would hold Internet Service Providers and technology manufacturers liable for “inducing” copyright infringement if their products or services are used primarily for illegal means. Broad opposition from the industry and nonprofit sectors resulted in the “INDUCE Act” being tabled, pursuant to further hearings. As new chair of the recently created Senate Judiciary Copyright Subcommittee, Senator Hatch is expected to reintroduce some version of the “INDUCE Act” in the 109<sup>th</sup> Congress.

Despite a history of cooperating with law enforcement, higher education institutions continue to be under public scrutiny as purveyors of unauthorized file sharing, as the content industry seeks looser legal remedies for requiring ISP compliance with their requests for specific consumer information. Fortunately, the courts have struck down all attempts to loosen subpoena requirements. In response, the RIAA and MPAA have redoubled their efforts to uncover the identities of suspected copyright infringers through “John Doe” subpoenas based on their Internet addresses, requiring them to follow formal civil proceedings through the courts.

In response to pressure from Congress, the entertainment and higher education communities created a joint committee to work on education, policy, and technical means for alleviating the unauthorized distribution of copyrighted material. The task force has provided information on technological opportunities for addressing unauthorized peer-to-peer file sharing over campus networks and has helped identify commercial vendors that offer legal distribution of music and other digital content over the Internet. Increasingly, higher education institutions are exploring offering these services to students as part of the campus experience.

### Significance for EDUCAUSE Members

Without careful consideration, new federal laws and regulations could negatively impact how faculty, researchers, and students access and share copyrighted material. In addition, the ability of higher education institutions to develop and expand distance-learning programs, increasingly vital for lifelong learners, could also be put in jeopardy through hasty legislation. Existing restrictions on the circumvention of

copyrighted material and the push to completely abolish circumventing any technological protection measure, even for fair use purposes, could hinder scholarship and research, including vital network security research.

### **Current EDUCAUSE Position**

EDUCAUSE continues to promote the fair use of online copyrighted materials, while encouraging our community to comply with existing copyright law. While seeking to discourage copyright infringement over university networks, we also wish to ensure that faculty and students' privacy is not unnecessarily compromised. We are opposed to any new federal mandates that require ISPs and computer manufacturers to employ *specific* technologies that restrict the downloading and redistribution of copyrighted material. Instead, we are working with our association partners to provide our community members with a thorough understanding of what measures, such as password protection, they may employ to restrict access of licensed, digital copyrighted works to authorized faculty and registered students as required under TEACH.

### **Leading Digital Copyright at the Federal Level**

The U.S. Copyright Office (<http://www.loc.gov/copyright/>) administers national copyright law, providing counsel to Congress on a wide range of copyright-related issues.

The Senate Judiciary Committee <<http://www.judiciary.senate.gov>> and House Judiciary Committee <<http://www.judiciary.house.gov>> typically take the lead on copyright-related legislation for Congress.

### **Resources**

The Digital Millennium Copyright Act of 1998, *U.S. Copyright Office Summary*, December 1998, <<http://www.copyright.gov/legislation/dmca.pdf>>.

U.S. Copyright Office, Online Service Providers: Designation by Service Provider of Agent for Notification of Claims of Infringement, <<http://lcweb.loc.gov/copyright/onlinesp/>>.

EDUCAUSE Resource Center, <[http://www.educause.edu/content.asp?section\\_id=11](http://www.educause.edu/content.asp?section_id=11)>.

Joint Committee of the Higher Education and Entertainment Communities Technology Task Force, <<http://www.educause.edu/1204>>.

"Technological Requirements of the TEACH Act," ACM, ARL, and EDUCAUSE white paper, <<http://www.educause.edu/LibraryDetailPage/666?Redirect=True&ID=CSD2725>>.

University of Texas Crash Course on Copyright, <<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>>.