

## What constitutes “Reasonable and Limited Portions” under the TEACH Act?

Section 110(2) of the Copyright Act (*a.k.a.* The TEACH Act) allows one digital copy to be made of copyrighted materials and stored on the college/university server. The copy may be used in ‘transmissions’ for **online** and **hybrid courses** so long as the materials are of the proper type and amount the law authorizes:

- Entire performances of nondramatic literary and musical works (music, news, concerts, poem recitations, speeches, etc.)
- **Reasonable and limited parts** of a dramatic literary (plays, opera), musical (musicals), or audiovisual works (movies, films, documentaries, etc.)
- Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching

No court case has interpreted what “**reasonable and limited parts**” means, therefore we look at the senate notes discussing the TEACH Act for guidance on this issue.

“...the fair use doctrine is technologically neutral and applies to activities in the digital environment; and the lack of established guidelines for any particular use does not mean that fair use is inapplicable.” (**Copyright Office report, 1999**). Meaning: the TEACH Act does not trump “fair use”.

“What constitutes a ‘reasonable and limited’ portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.” (**Senate report, 2001**)

“Fair use is a critical part of the distance education landscape. Not only instructional performances and displays, but also other educational uses of works, such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine. Fair Use could apply as well to instructional transmissions not covered by the changes in section 110(2) recommended above. Thus, for example, the performance of more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.” (**Senate report, 2001**)

In addition, the Congressional Research Service in a 2006 report of the TEACH Act states that “Although what constitutes a *reasonable and limited portion of a work* is not defined in the statute, the legislative history of the Act suggests that determining what amount is permissible should take into account the nature of the market for that type of work and the instructional purposes of the performance. For example: the exhibition of an entire film may possibly constitute a *reasonable and limited* demonstration if the film’s entire viewing is exceedingly relevant toward achieving an educational goal; however, the likelihood of an entire film portrayal being *reasonable and limited* may be rare.” (**CRS study 2006**)

**NOTE:** Fair Use may authorize the digital copying of materials in some situations where the TEACH Act does not.