

**Online Distance Education Study and Recommendations to the Registrar of Copyright from the Utah Education Network**

Eccles Broadcast Center  
University of Utah  
101 Wasatch Drive  
Salt Lake City, UT 84112  
<http://www.uen.org>

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In response to the request for comments from interested parties from the U.S. Copyright Office:

The Utah Education Network is responsible for serving the state's teachers, faculty, learners, and parents by providing an educational delivery system and associated services which utilize technology to compliment the educational experience. These services are provided through KUED-TV 7, Instruction Television; KULC-TV 9, Utah's Learning Channel; EDNET, a two-way, interactive distance learning system; and UtahLINK, education's access to the Internet. While the Utah Education Network provides services for both the System of Higher Education and the public education system in the state of Utah, for the purposes of this document, the focus will be on distance education services in public education.

**Statute instructs the Registrar of Copyrights to consider the following questions:**

**1) The need for an exemption from the exclusive rights for online distance education;**

Distance education is a unique form of education narrow in application compared to traditional educational systems. In Utah, there are over 20,000 school teachers. There are only 300 distance learning teachers certified in our state. Perhaps only 75 to 100 of them regularly teach over the UEN delivery systems. These teachers want to do what is right with regard to copyright law, but, at the same time, want to have access to wide varieties of media to share with their students. If fair and equitable guidelines are set up, online teachers will abide by them.

**2) The categories of works to be included in a distance education exemption;**

Most distance learning applications in the 2-way video/audio systems need to have broader accessibility to displaying of printed materials. Example: Using pictures, charts, tables, maps, photographs, etc., via closed circuit TV systems. This does not detract from future sales by an author, but might actually serve as an "advertising" outlet.

Distance learning teachers would also like broader access to using pre-made videotapes (commercial, educational, etc.) Teachers often supplement their classes (e.g., a course on Shakespeare) with a video. However, broadcast restrictions should remain in place.

**3) Whether appropriate quantitative limitations on the portion of the work that may be used should be imposed;**

Limiting the number of times a teacher can access a reference book, or the number of lines of a poem is an undue hardship and unreasonable expectation. Use of the material must be balanced with the creator's right of expression and fair-market application.

**4) The parties entitled to use the exemption;**

Those individuals or groups that are creating and utilizing materials in a non-profit setting (teachers, program developers for schools and educational institutions, instructional designers, web

site designers), should be considered the parties entitled to copyright exemption.

**5) The parties eligible to receive distance material under the exemption;**

Students receiving educational programming (from a non-profit institution) should be eligible to receive distance material. Careful consideration should be given to the format of reception as digital mastering of materials received through technological applications is now quite varied, and will continue to evolve.

**6) Whether and what types of technological measures to limit access, reproduction, and retention of protected works made available under the exemption should be required as a condition of institutional eligibility to use the exemption;**

Encryption techniques to limit access, reproduction and retention of those protected works seems to be mandatory and should be considered as a necessary protection to encourage artists and authors to remain involved in instructional design.

**7) The extent to which the availability of licenses to use copyrighted works in the interactive, digitally delivered distance education should be a factor in evaluating the need for an exemption; and**

If licensing of educational materials were inexpensive enough to allow schools to be involved with interactive, digitally delivered distance educational materials then it might not be necessary to allow for exemptions. Either have exemptions in place to allow broader access or encourage inexpensive, easy licensing processes to accomplish the same thing. Enforcement of licensing, however, may be difficult to impossible to achieve.

**8) Other interactive, digital education issues the Registrar deems relevant.**

Clearer definitions of what distance learning is and isn't. Distinctions between online, broadcast television, Internet instruction, CD-ROM, asynchronous and synchronous forms of distance learning need to be clearly made. The definition of what is the classroom is especially important, and must be made quickly. What and where is my classroom?

Thanks to George T.W. Miller Jr., EDNET Faculty Training Specialist, Utah State Office of Education, for his considerable input to the questions above.

**Other specific questions the Registrar is considering under Section 403 during this process are:**

**1) Nature of Distance Education**

- a) Distance education is the process of teaching/learning delivered without constraint of time or place through technology. Distance education is different from traditional face-to-face education because it neither requires the teacher or the student to be in the same place, and often, not at the same time. This is accomplished is through digital technologies: one-way non-interactive video and audio (e.g., taped video cassettes, pre-recorded telecourses), one way video with two-way interactive audio (e.g., teleconference via satellite), two-way interactive synchronous methods (e.g., compressed video), and two-way interactive asynchronous methods (e.g., web-based courses). These methods offer the opportunity to shift the traditional educational model, rooted in the classroom, to a model of education 'on-demand'.
- b) Distance education programs currently available come in a variety of formats and delivery methods. The internet is the "hot" way to provide distance education at the moment, with online registration,

- correspondence via e-mail with teachers, teaching assistants and other students, group discussion forums, hotlinks to class materials and resources, etc. While non-interactive types of delivery are still an option for students, more and more common are web-based classes (interactive and asynchronous).
- c) When possible, course materials for courses provided through the Utah Education Network are made available in electronic form. In many instances, a password is required for access.
  - d) Public distance education programs provided through the Utah Education Network are all funded through State appropriations, all non-profit. Fees are nominal to students.
  - e) The distance education programs that are 'for credit' or go towards a degree are accredited by the Utah State Office of Education.
  - f) The majority of those students and educators utilizing the services of the UEN are in rural communities throughout the state of Utah; however, the potential for the services to be used is 100% throughout the state. The only limits placed on student participation are practical ones; no upper limit has been set.
  - g) Educational programs utilizing technology for delivery are offered at all educational levels in the state of Utah, most of which are offered 'for credit' or as part of degree programs.
  - h) The instances of newly created content vs. pre-existing content vary dramatically from teacher to teacher, from course to course, from day to day. Many teachers are actively working to create their own content to avoid the possible pitfalls of copyright infringement on pre-existing materials. All types of content are used in the education process in Utah.
  - i) Guidelines and resources which provide information on copyright law are widely available and distributed to all Utah's public educators.

## 2) **Role of Licensing**

Teachers and administrators obtain permission to use copyrighted content when appropriate and within reason, but are often wary about using pre-existing content. Much content that could potentially have great impact in the classroom does not get employed because of the difficulties associated with licensing and/or receiving permission. Often the time frame for relevant use of the specific content will dictate whether or not a teacher will pursue an agreement for its use. Fair use is a consideration for use of some copyrighted content without pursuing permission other ways.

## 3) **Use of Technology**

The technologies used by the Utah Education Network, EDNET, UtahLINK, and KULC Instructional Television are generally commercially available, but have been specifically adapted for each system's specific mission. These digitally provided services include: telecourses, courses offered over closed-circuit television and satellite, video teleconferencing, instructional television, Internet connections for web-based courses, and streaming technology for broadcast programming via the Internet.

## 4) **Application of Copyright Law to Distance Education**

The existing law is not adequate in addressing the current and anticipated forms of distance education via digital technology. The narrow definitions in Section 110 of the Copyright Act of 1976 do not clearly address the ways in which distance education is meeting the needs of educators and students now and the ways in which it will be moving in the future.

In the future, distance education will encompass such diverse and still unidentified resources that trying to define specific categories of works to be covered by liability exemptions will result in an incomplete study at

best. It seems reasonable to propose that accredited and non-profit institutions benefit from these exemptions, but the emerging roles of organizations providing education for employees and students through corporate partnerships should not be overlooked. Recipients should be those who use copyrighted materials for educational purposes in accredited programs. Safeguards such as encryption, passwords, etc. should be utilized to protect against unauthorized access in appropriate situations.

Finally, regardless of what decisions are made about exemptions to Copyright Law and distance education, and how they are designated, it is unequivocal that the new law must be clear and concise, without ambiguous or vague rules and terms. The concept of fair use, while rooted in good intentions, creates many problems because of the lack of specificity within this section. The recommendations for Congress should be distinct in that the promotion of distance education through digital technologies will only be successful if those involved are thoroughly cognizant of the rules and laws that guide this process.

Mindy Sartor  
Program Manager, Policy and Planning  
**Utah Education Network**  
101 Wasatch Drive  
Salt Lake City, UT 84112  
(801) 581-3423 / fax (801) 581-5735  
msartor@media.utah.edu