Background

The Digital Millennium Copyright Act of 1998 directed the Register of Copyrights to make recommendations on ways to promote interactive distance education through digital technologies while maintaining the traditional balance of rights of copyright owners and users.

In May 1999 the Register of Copyrights issued a balanced and comprehensive report to Congress on copyright and digital distance education. Among the Register's findings were that current copyright law does not adequately address distance education, and that the system for licensing copyrighted works for digital distance education uses is not working well.

Legislation Introduced

Education and library associations have been working closely with the Copyright Office in drafting legislative language for Congress that codify their recommendations. Senators Orrin Hatch (R-UT) and Patrick Leahy (D-VT) recently introduced the "Technology, Education and Copyright Harmonization (TEACH) Act of 2001" (S.487), which incorporates most of the Copyright Office recommendations. We are currently working with the Senate Judiciary staff to answer any lingering questions and to ensure that balanced legislation moves to the Senate floor. The House of Representatives is expected to introduce companion legislation this session.

Higher Education Supports Legislation Codifying the Copyright Office Recommendations

Higher education and library communities participated in the Register's study and endorse her findings and recommendations. We believe modest changes are needed in Sec. 110(2) to create parity between classroom and remote student access to instructional material. In short, performance of any type of copyrighted work allowed in a physical classroom should be similarly be permitted in distance learning environments. Further, the law should strike the proper balance between the needs of learners and educators and the interests of copyright holders.

We are not requesting a blanket exemption to distribute copyrighted works, but rather a tailored exemption for distance learning that supports the following guiding principles for the use of copyrighted works in the digital environment:

1. Should apply to resources the institution has legally acquired by fair use, gift, or licenses.
2. Must be for legitimate, educational activity; accreditation is one measure of that "educational purpose."
3. Must be in the course of instruction.
4. Must permit all forms of distance learning.
5. Must not be restricted to the traditional perception of the classroom.
6. Must extend exemption to all classes of works, including audiovisual.
7. Must be permitted to perform and display anything in a distance environment that is permissible to perform and display in a classroom.
8. Exemption must include Sec. 106 rights necessary to accomplish this purpose.
9. Institutions must provide reasonable assurances against unlawful uses of copyright works.
10. Copyright owners must not be permitted in a digital environment to use licensing to limit other privileges that apply such as fair use.

We encourage Congress to support the TEACH Act (S.487) and any similar House companion legislation that implements the necessary changes for education and research to thrive in the digital environment. This is critical to enable the education and library communities meet the burgeoning need to serve students wherever they are located (on campus, at home, or at work) and whenever they desire to receive their coursework.