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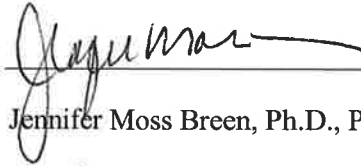
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TECHNOLOGY, EDUCATION AND COPYRIGHT HARMONIZATION ACT BEST
PRACTICES

By
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A DISSERTATION IN PRACTICE

Submitted to the faculty of the Graduate School of Creighton University in Partial
Fulfillment of the Requirements for the degree of Doctor of Education in
Interdisciplinary Leadership

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Abstract

Educational institutions continually work to balance between providing students with access to data and protecting copyright owner's exclusive rights. The Copyright Act of 1976, effective in 1978, provided exemptions for live and distance education. As digital technology grew in capability, its capabilities were incorporated in distance education, but the current law did not account for technology changes. To address the gap, the Technology, Education and Copyright Harmonization (TEACH) Act of 2002 was enacted. The TEACH Act expanded exemptions but added rigorous institutional requirements and limitations. The requirements were difficult to interpret or implement, limiting access to the benefits, although a few institutions did succeed. The study examined successful institution's processes, policies, and tools to define best practices with the intent of creating a TEACH Act best practice guide. A grounded theory qualitative method was used, allowing the use of multiple data sources. Data was collected in two distinct phases: a questionnaire and interviews. The questionnaire gathered data on the TEACH Act's implementation rate, the issues impacting implementation, and successful institutions. Successful institutions participated in the interview phase providing direct and anecdotal evidence of processes and procedures. Due to low participation rates, the study could only define general best practice themes. The lack of specific best practices indicated the need for further research. The study proposed that a professional organization conduct further research to develop a series of TEACH Act best practice guides focused on specific types of copyright material to reduce conflicts and gain support of users and owners.

Keywords: TEACH Act, copyright, best practices, Fair Use

Dedication

I dedicate this work to the four biggest influences in my life. To my mother, Marilyn, who showed me quiet strength and a positive attitude can persevere despite the struggles life throws at you. To my loving wife, Tracey, who even after thirty-seven years, is still my greatest motivator, biggest supporter, and continually challenges me to seek new adventures. And finally to my daughters, Emily and Caitlin, who constantly force me to see the world in a different light and expand my horizons every day.

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CHAPTER ONE: INTRODUCTION

Copyright versus Distance Education – A Sensitive and Tenuous Balancing Act

In the 1990s, digital technology changed how the world accessed, used, and shared information (United States Copyright Office (USCO), 1998). For education, digital technology created opportunities to discover and use source data that was once unattainable (Mohr, 2004). This improved instructors' ability to expand student awareness and increase their learning potential (Colbert & Griffin, 2007). Digital technology also provided new methods and tools to share this data (Fisher & McGeeveran, 2006). No longer was the classroom limited to face-to-face academics in a physical facility; instructors could reach students regionally and globally without being in the same location (USCO, 1999). Despite the advantages digital technology provided, the technology did not change the instructor's responsibility to protect the copyrights associated with the material (Reyman, 2006). Instead, it increased the instructor's continual efforts to achieve a balance between meeting the needs of educating students and protecting the intellectual property owners' rights (Hutchinson, 2003).

Digital technology's impact upon education created an imbalance between education and copyright (Gasaway, 2010). The 1976 copyright law did not account for technology's impact on distance education or education's desire to adopt technology to reach a broader audience, especially those disadvantaged by distance, finances, or personal limitations (USCO, 1998). In 1998, Congress directed the United States Copyright Office (USCO) to study the issue and recommend changes to the current law (USCO, 1998). The study's results eventually led to the Technology, Education and Copyright Harmonization (TEACH) Act's enactment in 2002, which revised Section

110(2) of 17 United States Code (USCO, 1999). The revisions were intended to provide educational exemptions similar to live classrooms in Section 110(1) (Lipinski, 2003c). However, due to intellectual property owner concerns, additional implementation requirements were added (Latourette, 2006). The requirements and its ambiguous language were viewed as difficult to understand, and many institutions did not feel safe from potential liability and avoided implementing the TEACH Act (Irwin, 2007).

This study's intent was to research and identify the strategies, policies, processes, and tools used by accredited non-profit post-secondary education institutions with an established TEACH Act compliant program. The author designed a two-phase grounded theory qualitative analysis allowing the use of multiple data collection tools. The questionnaire phase confirmed that the issues stated in the literature were impediments to implementation. The questionnaire also identified educational institutions implementing the TEACH Act to support its distance education supported programs. These institutions were invited to participate in the interview phase to collect experiential and anecdotal data on the TEACH Act's implementation successes, issues, and lessons learned. Due to a low participation rate in the two collection phases, the author added website review as a third data collection method. The data enabled the author to develop general categories of best practice, but there was not sufficient data to define definitive best practices to be compiled into a guide. The results did not allow the author to meet the study's aim, but it provided evidence of potential best practices requiring additional research. The author proposed that a professional organization with members interested in addressing educational copyright concerns to conduct further research to define best practices. The proposed solution recommended the organization consider developing a series of TEACH

Act best practices guides working with the owners of specific types of copyrighted material such as video or dramatic plays. The concentration on a specific topic would reduce conflict between owners and provide solutions acceptable to users and owners.

Problem Statement

The TEACH Act did not provide educational institutions with similar copyright privileges granted the live classroom setting as originally envisioned (Colbert & Griffin, 2007). Intellectual property owners' concerns about losing control and potential profit created a compromise adding limitations and requirements (USCO, 1999). Additionally, the TEACH Act's terminology was considered ambiguous, using words such as *reasonable* or *technically feasible* without providing further definition or discussion (Hutchinson, 2003). The additional requirements and ambiguous language are considered key factors in why educational institutions are not implementing the TEACH Act (Ashley, 2004; Carnevale, 2003). If an institution is not TEACH Act compliant, can its distance education program produce the same level of quality as a live program?

Implementing the TEACH Act required the institution to research the TEACH Act and develop its own definitions. However, there was limited research data available on TEACH Act interpretation, successful or unsuccessful implementation efforts, or legal case review. The lack of data increased an institution's caution in proceeding with TEACH Act compliance based on concerns of legal action. Research that identifies TEACH Act best practices and lessons learned and compiled in a single, or multiple, documents was required to increase an institution's willingness to implement the TEACH Act.

Purpose of the Study

The purpose of this qualitative study was to identify the strategies, policies, processes, and tools used by accredited non-profit post-secondary education institutions with an established TEACH Act compliant program.

Research Question

The educational quandary presented by digital technology added a level of administrative, technical, and legal burdens for institutions. The dilemma institutions faced was the desire to provide students with access to more data, without added expense, and reach more students versus the perceived onerous burden of current copyright law. The TEACH Act was intended to remove portions of the burden to allow distance education the same exemptions available to live courses. The TEACH Act did provide some level of exemptions but at the same time added new burdens for educational institutions. Institutions were required to interpret ambiguous language with no examples or best practices to help them develop compliant programs. The following research question guided this qualitative study: What are the processes, policies, and tools of a successful TEACH Act program in accredited non-profit post-secondary educational institutions?

Significance of the Study

For education, instructors are required to continually balance the requirement to guide students in exploring knowledge against protecting the copyright owner's rights (Lipinski, 2003b). The TEACH Act's intent was to reduce the copyright barriers for distance education, but literature indicated confusion about the language and concern regarding legal repercussions (Carnevale, 2003; Irwin, 2007). The confusion in the

TEACH Act's language impeded institutions from establishing TEACH Act programs and a barrier to distance education still existed (Ashley, 2004; Colbert & Griffin, 2007). The best practice data identified in this study should reduce confusion, provide multiple examples or approaches, and encourage institutions to consider the TEACH Act.

Improving Scholarly Research

Limited scholarly research literature existed regarding the TEACH Act. Most peer-reviewed articles focused on the TEACH Act's background, provided a critical language review, highlighted the perceived challenges and limitations, or a provided a combination of the three. Only a few articles featured any mention of best practices, and authors did not specifically address the TEACH Act but general copyright practices, which may have benefits for TEACH Act implementation. The study's results expanded scholarly research beyond the law's basic tenets and the perceived implementation challenges. It produced limited data on implementation statistics, confirmed the implementation impediments, and identified general categories of best practice based on commonalities between a small sample size of compliant institutions. The study did not produce a concise guide on the best practices, which was the study's aim. The general best practice categories defined provide justification for further focused research.

Improving Practice

The TEACH Act's ambiguous language provided doubt and concern regarding whether a single institution's interpretation and definition was adequate or opened the possibilities for future lawsuits (Irwin, 2007). The author envisioned this study would provide institutions with examples they could use in future implementation efforts and increase TEACH Act practice. The results identified patterns in implementation but not

definitive details. Despite the lack of defined best practices, the general categories provided evidence that best practices could be determined with further research. If a professional organization or institution conducts the recommended further research, the results should enable institutions to increase practice. Finally, as more institutions adopt similar policies, practices, and tools, the potential for standardization within education of these best practices or lessons learned increases. Standardization can drive down costs eventually allowing smaller institutions to afford TEACH Act implementation.

Improving Policy

While the study's intent was not focused on changing policy or statutory law, there is potential for improvement to come from increased use of common best practices. Identification of and a consolidated listing of best practices from successful implementers can support standardization across multiple organizations. This eventually allows governing bodies or professional educational societies to establish policy for its member organizations. As standardization increased, these governing bodies and professional societies could petition for updates to existing copyright law seeking to remove ambiguity and implement changes based on the lessons learned from multiple institutional implementation efforts.

Aim of the Study

The aim of this study was to develop a set of best practices from the successful examples for other institutions to consider in TEACH Act implementation strategies.

Methodology Overview

The initial literature review did not provide adequate data to identify best practices currently in use by institutions or data on success rates or lessons learned. With

these limitations noted, the author used a grounded theory qualitative approach to gather data. The grounded theory approach allowed for multiple phases and devices of data gathering using collated data from one phase focusing the next phase's efforts (Creswell, 2014). The author initially designed two distinct data collection phases during the study. Phase one was a questionnaire of closed- and open-ended questions seeking to determine the rate of implementation, define the impediments to implementation, and identify distance education institutions implementing the TEACH Act. The questionnaire data identified a subset of institutions with compliant TEACH Act programs indicating a willingness to be interviewed in phase two. The interviews allowed the institutions to provide more direct examples and anecdotal information on its implementation efforts. However, due to small samples sizes in the two phases, nine questionnaires and three interviews, the author added website review as a third collection method.

Definition of Relevant Terms

In the legal realm, knowing how specific terms and words are defined for a law is vital in understanding the law's intent. Copyright law, contained in Title 17 of United States Code, uses terms specific to copyright as well as common terms with specific definitions related to copyright. For the reader to gain a stronger understanding of the study and copyright law, the following terms were used operationally within this study. The primary sources for the definitions was Title 17 and the United States Copyright Office website as cited.

Accredited: Determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education (U.S.C. 17 § 110(11), 2011)

Audiovisual work: A work that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, tighter with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied (U.S.C. 17 § 101, 2011).

Copyright: A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright (USCO Website).

Digital Transmission: A transmission in whole or in part in a digital or nonanalog format (U.S.C. 17 § 101, 2011).

Display: To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images non-sequentially (U.S.C. 17 § 101, 2011).

Distance Education: A form of education in which students are separated from their instructors by time and/or space (USCO, 1999).

Exemption: Freedom from a duty, liability, or other requirement; an exception (Garner, 2010, p. 512).

Mediated Instructional Activities: With respect to the performance or display of a work by digital transmission under section 110 refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting (U.S.C 17 § 110(11), 2011).

Perform or Performance: To perform a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible (U.S.C. 17 § 101, 2011).

Technical Performance Measure: “Any combination of software and hardware that regulates access to electronic information” (Strickland, 2004, p. 19).

These terms represent a portion of the unique terminology used in the TEACH Act. A key area identified in the literature review was the ambiguous language leaving institutions to define the terms internally and hope these definitions would not be a cause for legal action. As this study progressed, other terms were reviewed and where possible defined in context with the law.

Assumptions

The TEACH Act was enacted in 2002, and since that time, the peer-reviewed articles focused on the perceived limitations and issues involved with the TEACH Act. There have been no research or case studies into implementation successes or failures documented, nor have there been any published court cases. The lack of published

research data and court cases indicated institutions were either wary of implementing the TEACH Act or may not be aware of the benefits. Based on this lack of data, the first assumption is post-secondary educational institutions that were interested in implementing the TEACH Act did not have the necessary tools and data necessary or determined they did not need to implement and use existing exemptions.

Even if institutions do have access to tools, digital technology continues to change as new technology, tools, and methods are created to increase access, use, sharing, and protection of data. At the same time, improvements in digital technology are also being used to overcome the protection measures developed to help meet copyright requirements forcing improved protection to be developed. This constant changing technological landscape leads to the second assumption, that it increased an institution's need for the TEACH Act.

Delimitations

The study's purpose and the institutions approved to implement the TEACH Act drove the study's delimitations. The development of best practices required gathering data from a representative number of institutions. These practices can then be correlated and analyzed to outline common core factors but also identify unique individual aspects worthy of being labeled a potential best practice. The number of eligible institutions is too large and unmanageable for the study's scope and required a strategic review to define a reasonable subset of representative institutions. Because the study limited the number of institutions assessed, the results may not be useful for all institutions. Additionally, the use of a small population limited the results, and the researcher could not claim all possible best practices were identified.

Limitations

A limiting factor in the study occurred during the interview phase. The author determined conducting live interviews with institutions willing to provide additional observational and experiential data would be more beneficial than those conducted over the phone. Live interviews allowed the author to gather more than verbal cues, enabling more direct follow-on questions based on observations, the ability to go over examples face-to-face, and potentially dialog with multiple individuals from the different disciplines involved with TEACH Act implementation and management. The researcher was limited in available time and funds to support conducting live interviews at all institutions. The researcher focused on candidates with the strongest programs and then used technology such as WebEx to conduct other interviews and maintain some ability to gather more than verbal cues. Low participation rates were limits not identified during the study's design. Difficulties in overcoming institutional concerns regarding anonymity guarantee and legal repercussions led to small samples sizes. The reduction in participation and data gathered impeded the author from achieving the study's purpose and aim.

Leader's Role and Responsibility in Relation to the Problem

Copyright compliance, and specifically TEACH Act implementation, required an interdisciplinary approach (Disclafani & Hall, 2012; Latourette, 2006). For an institution to implement the provisions, it required administration to publish policy, educate the faculty, and provide the required funding. It required technology experts to assess, install, and sustain the equipment and software. Implementation required instructors and library services to develop new courses and ensure they are compliant. Finally, it

required legal advice either from an institutional counsel or from an outside source. A key leadership factor in dealing with interdisciplinary tasks is to first understand each group's concerns, ideas, and motivation and then use this information to build a common understanding and the merits of pursuing the issue. Understanding the leadership style and skills employed to build the team and guide it through the process provided insight on leadership's role in TEACH Act implementation. It answered the question on whether leadership style is a critical factor in a successful implementation and lessons learned on positive and negative aspects of leadership styles and skills.

The study's nature required the author to use different leadership styles and skills. The two-phase methodology and target audience required the application of various leadership techniques. Instead of assessing an individual organization where a single, yet adaptable, leadership style can be defined, this study assessed multiple educational institutions. Each institution had its own environment and this wide diversity was not conducive to the application of a single standard leadership style but to consider use of multiple techniques from different theories such as transformational or authentic.

Building trust with each institution was the primary critical skill to garner support quickly. The author exhibited authenticity in his belief in the study and in his interactions with each institution, being as transparent as possible (Johnson, 2012). However, authentic leadership can overwhelm and take on an egotistical slant. The author used aspects of other leadership theories such as transformational leadership, to reach a higher level of potential for the common group and charismatic to build strong relationships (Johnson, 2012). Trust building with each institution required strong communication skills to convince each organization about the study's significance and benefits they may

receive through participation (Rath & Conchie, 2008). However, each institution's motivation was slightly different, requiring a flexible communication strategy adaptive to each institution to address its unique needs while creating connectivity between all institutions (Rath & Conchie, 2008). This study required development of a deliberate leadership strategy focused on adapting aspects of different theories and skills to each and every situation. The use of different techniques enabled the author to react to individual institutions and gain trust and support of only nine institutions. Unfortunately, the level of risk aversion and concern for legal actions by many institutions could not be overcome.

Summary

Instructors continually conduct a balancing act between providing the best, most accurate, and latest information in a field of study versus protecting the copyright owner's rights. The government copyright laws supported the balance and provided instructors with exemptions to help them create learning without exposing the institution to legal liability. This balancing act became more difficult when education translated from the classroom into the digital realm due to the ease of access to data never available previously. The 2002 TEACH Act copyright law amendment was intended to help instructors achieve a similar balance digitally to what they had in the live classroom. However, due to the nature of digital technology, the TEACH Act imposed a series of requirements, restrictions, and ambiguous language causing institutes implementation issues. Therefore, education has not realized the TEACH Act's benefits.

The author proposed a qualitative grounded theory study identifying current strategies, policies, processes, and tools used by successful accredited non-profit

education institutions with the aim developing a set of best practices for other institutions to use in implementing the TEACH Act. The study used a two-phased approach with a questionnaire gathering initial data from institutions and a series of follow-on interviews, document reviews, and analysis but had to add a website review as a third method due to low participation rates. Gathering enough common practice evidence without having to contact every institution in the United States as well as timing and funding to conduct proper follow-on interviews are limits the author identified but recognized careful and flexible strategic planning should have avoided future issues.

The author determined building trust with and motivating institutions were the critical leadership skills necessary to gain support and participation. The author adapted leadership techniques from different leadership theories in working with each individual institution. Authenticity provided the foundation used to gain initial interest in the study. But this did not address individual institutional concerns regarding the study. This required the author to use transformative and charismatic techniques to build trust and to get the institution to see how their participation would be beneficial to the larger educational professional and identify them as leaders in the field. Unfortunately, the fear of legal repercussions could not be overcome, leading to low participation and limited data.

CHAPTER TWO: LITERATURE REVIEW

Introduction

Digital technology has integrated into nearly every aspect of life. It opened connections and access to people and data never available before (Evans, 2013). It also increased the number of methods to create and disseminate information making it easier than previous analog methods such as hardcopy reproduction and materials (Irwin, 2007). The increased access, ease of creation and reproduction, and simplicity of dissemination raised concerns regarding technology's impact upon copyright law (National Research Council, 2000; USCO, 1998). This impact became even more relevant as education increased its use of digital technology to provide courses and course related material in the 1990s (USCO, 1999).

For education, which is responsible with cultivating creativity and innovation (Crews, 2003; Lipinski, 2003a), digital technology improved an institution's ability to reach potential students not able to attend standard classes and increased access to data not previously available (Fischer & McGeveran, 2006). Unfortunately, copyright law had not kept pace with technology, making distance education a poor substitute for live coursework (Hutchinson, 2003). The 2002 Technology, Education and Copyright Harmonization (TEACH) Act's intent was to overcome the gap between distance and live education (USCO, 1999) and achieve copyright balance between owner's rights and users' needs (Kehoe, 2005; Latourette, 2006). Despite the law's enactment, there was not much evidence indicating higher learning institutions implemented the provisions (Gaide, 2005; Gerhardt & Wessel, 2010) or identified best practices or lessons learned, which was the focus of this study.

The literature will guide the reader in establishing the study's requirement. Before addressing the TEACH Act's complex details, the review will first provide a basic foundation of copyright law. This foundational background sets the stage for the review to discuss the history, issues, and compromise efforts between the copyright owners and users leading to the TEACH Act enactment. Next, the review outlines the TEACH Act's language, highlighting the requirements and provides a comparison to the previous version as well as the classroom exemption. The comparison information gives an awareness of the complexity that aid in understanding the perceived issues and limitations identified by members of academia, library science, and legal scholars who consider these limitations an impediment to TEACH Act implementation. Finally, a review of any identified best practices or lessons learned illustrates the limited and scattered data available to interested educational institutions seeking to implement the TEACH Act. At the end of the literature review, the reader should be able to understand the need for the proposed study.

Purpose of the Study

The purpose of this qualitative study was to identify the strategies, policies, processes, and tools used by accredited non-profit post secondary education institutions with an established TEACH Act compliant program in compliance.

Aim of the Study

The aim of this study was to develop a set of best practices from the successful examples for other institutions to consider in TEACH Act implementation strategies.

Copyright and the TEACH Act Literature Review

The TEACH Act is a complex set of verbiage that can be difficult to comprehend even for those versed in copyright law. It uses common words and phrases, but the language's intent or definition may not be consistent with the plain meaning of those words or common understanding of the average person. Therefore, before a detailed literature review on the TEACH Act, a basic understanding of copyright law is required. Then, using this understanding, a review of copyright law sections directly affecting education is included to add depth to the relationship between copyright and education. Finally, this section will address the history of the activities, studies, and reports leading to the TEACH Act. At the end of this section, the reader should have the background necessary to better comprehend the TEACH Act's requirements, the perceived issues and limitations, and the lack of data on best practices supporting the need for this study.

Copyright Overview

The importance of copyright as a principle within the United States is addressed in the U.S. Constitution, Article I, Section 8. It states, "Congress shall have power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries" (USCO, 2011, p. iii). This clause, among other things, empowered Congress to enact legislation to grant authors' rights intended to protect their economic advantage for a limited time before the work is transferred to the public domain (Latourette, 2006). In providing this guaranteed rights period, the owners are more inclined to share their intellectual work (Gasaway, 2010). The authors' guaranteed rights are annotated in Section 106 of Title 17 United States Code (2010) as the right to reproduce the work,

prepare derivative works, distribute copies of the work through sale or lease, and perform or display publicly the work. The owner can transfer some or all of their rights to other individuals or entities, which is a common occurrence when, for example, an author publishes an article (Evans, 2013). While the author may have transferred some rights, they still retain the other rights and this can increase confusion when an individual or entity is seeking permission to use the copyrighted work (Gasaway, 2010).

The words in Article 1, Section 8 “To promote the Progress of Science ” used to provide owner’s rights is also considered critical in establishing education’s unique role in regard to copyright and continues to be addressed over the years in the literature (Ferullo, 2004; Irwin, 2007; Wiggins, 2011). Fisher and McGeeveran (2006) and Gerhardt and Wessel (2010) stated that education is central to the purpose of copyright, and the copyright protection was meant to promote learning. Nearly every author reviewed, from Crews and Lipinski in 2003 to Aull (2008) and Nelson (2009), highlighted copyright law as a balance between protecting the owners’ rights and the interests of users such as instructors to have access. To achieve this balance while maintaining the exclusive rights, Congress provided exemptions in the copyright law targeted at very specific uses that would not be considered an infringement or require the user to pay for the right to use the material (Irwin, 2007). The exemptions were written with requirements and conditions that must be met, ensuring users could freely use copyrighted material and infringe upon the owner’s exclusive rights (Gasaway, 2010). The exemptions provide balance, allowing certain users an opportunity to promote progress and learning while maintaining the owner’s rights.

However, despite the near-unanimous agreement that the intended concept of balancing user and owner is necessary to promote science, there is a growing and dissenting view that the current law is unbalanced. In response to the TEACH Act changes, Kehoe (2005) argued that, by limiting TEACH Act eligible institutions to accredited non-profit institutions, the TEACH Act was eliminating a significant portion of available distance learning providers. His argument was not about the inclusion of *accredited* in the eligibility requirement; he agreed with the Copyright Office's (1999) assessment that accreditation ensured a measure of legitimacy. Kehoe's (2005) issue was in keeping non-profit in the requirement, which, in his opinion, eliminated a large sector of distance education providers from eligibility and reduced the TEACH Act's true impact. The Copyright Office (1999) considered eligibility requirements to include removing non-profit, but concluded non-profit was consistent with the intent of its study as well as existing and companion sections.

Other authors considered the added TEACH Act requirements for distance education in comparison to the existing live class exemption as biased toward owners' rights and reducing the instructor's ability (Colbert & Griffin, 2007; Gasaway, 2010). Hutchinson (2003) also addressed the concern that the TEACH Act's compromise could erode distance education's quality but emphasized the TEACH Act was as "educator-friendly" (p. 2207) as possible at the time. Gerhardt and Wessel (2010) also countered these arguments, stating copyright and the supporting law advocate for learning and education as well as creative expression growth. Despite the growing number of authors who considered copyright law to be biased against education, these same authors also

recognized the progress the TEACH Act provided in advancing quality distance education.

In developing the current version of copyright law, Congress continued to maintain the exclusive rights, yet recognized the role education played in promoting science and the arts (USCO, 1998). To ensure education was not placed in a situation where the costs to obtain permission to use copyrighted material exceeded the benefits of exposing students to the latest ideas and information, Congress added education-specific exemptions in addition to general exemptions previously used (Gasaway, 2010). The next section will review the specific education-related sections to expand the reader's awareness of unique connection between copyright and learning.

Education-Related Copyright Law

The current version of the copyright law was enacted in 1976 (Colbert & Griffin, 2007; USCO, 2011). Since its inception in 2011, when the latest version of Title 17 was published, according to the United States Copyright Office (2011), the law has been amended nearly 70 times. The scope of the changes cover numerous sections and reflected environmental, legal, political, and technological changes occurring in the United States and the world. During the 1976 version's development and review, more emphasis was placed on education's use of copyrighted material (Aull, 2008). Kehoe (2005) emphasized Congress' intent was to provide educational institutions and instructors access and use without the requirement to pay for its use. The result was two primary sections providing exemptions for education. The first, Section 107 – Fair Use, is not an education-specific exemption, but it includes in its areas of applicability teaching, scholarship, and research (Gerhardt & Wessel, 2010). Biswas and Russo

(2012) considered the Fair Use exemption as the most influential exemption for education. The second, and more specifically education-related exemption, is Section 110 – Exemptions of certain performances and displays. In 1976, Section 110 consisted of two subsections, the first of which focused on the live classroom environment and the second on broadcast education. A review of these two exemptions as written in 1976 is important in establishing the copyright environment in place when digital technology began to impact education.

Fair Use. Section 107 was drafted to support Article 8 of the constitution and promote the progress of knowledge (Wiggins, 2001). Fair Use is an exemption to the copyright owner's rights allowing for the use of copyrighted material without obtaining permission for several purposes including education-related areas of teaching, scholarship, and research (Biswas & Russo, 2012) and would not be considered an infringement. It is not a blanket exemption giving users free reign but requires the user to make a Fair Use assessment based on four factors (Wiggins, 2011). Fair Use does not give users in the accepted purposes an unconditional right to use copyright material without permission. Gasaway (2010) stated that courts identified that not all uses of copyrighted material in the identified areas can be defined as Fair Use.

Fair Use factors. In identifying if a use is Fair Use, Section 107 provided four factors to be reviewed: purpose and character of use (commercial versus non-profit educational); nature of the work; amount and substantiality of the portion used; and, the effect on the potential market (Netanel, 2011). As is common with other sections in the copyright law, Section 107 did not provide further detail regarding how to interpret these factors (Gerhardt & Wessel, 2010). The lack of further definition in the law required

each institution to characterize each factor and then create an institutional process or policy for determining Fair Use (Duncan, Clement, & Rozum, 2013). Since each item and its use are unique, one Fair Use determination cannot be used in subsequent use cases or for similar material and requires the instructor to review each item and each use against the four factors, adding to the workload necessary to use copyrighted material (Lyons, 2010). This lack of definition and guidance allowed educational institutions to make misinterpretations and misconceptions regarding the Fair Use section's basic intent such as the idea that any educational use is considered Fair Use (Duncan, Clement, & Rozum, 2013). These misinterpretations have led to copyright owners filing legal actions claiming institutional Fair Use practices were actually an infringement of their rights.

Affirmative defense. Procedurally, the courts considered the claim of Fair Use to be an affirmative defense (McDermott, 2012). An affirmative defense is “a defendant’s assertion of fact and arguments that, if true, will defeat a plaintiff’s or prosecution’s claim, even if all the allegations in the complaint are true” (Garner, 2010, p. 179). This required the institution to prove their defense versus the plaintiff proving their rights were infringed (Garner, 2010). These cases allowed the courts the opportunity to assess and interpret law leading the court’s decisions providing some level of guidance, though this guidance has changed over the course of time as more opinions based on facts of specific cases added knowledge on interpretation. (Mohr, 2004; Wiggins, 2011). The earlier cases placed emphasis on the fourth factor, market effect, as having more weight than the other three (Fisher & McGeeveran, 2006; Netanel, 2011). Subsequent cases repudiated the previous interpretation that the fourth factor was more important than the other factors and stated all factors need to be assessed and each case determined on all four

factors (Gerhardt & Wessel, 2010). While all four factors should be assessed, Latourette (2006) pointed out that it is not required to satisfy each factor to the same level allowing for flexibility. These findings indicated each use case requires careful and structured review and consideration (Gerhardt & Wessel, 2010; Wiggins, 2011). As Fair Use cases continued to be argued, Aufderheide and Jaszi (2011) identified a trend that a primary consideration in Fair Use determination was the users' use of transformation versus pure copy and paste. The trend indicated transformation has become the first measure and if there is no transformative effort, then there is a lesser likelihood the use would be considered Fair Use (Aufderheide & Jaszi, 2011). They further noted that all factors were considered and in some cases, non-transformative efforts were deemed Fair Use based on the overall evidence.

Fifth factor? While the four statutory Fair Use factors are well documented in copyright law, there are several authors who identified a related, but unstated, fifth factor. Lyons (2010) and Gerhardt and Wessel (2010) derived this fifth factor from their own careful review of Fair Use cases. The fifth factor is defined as the organization showing an act of good faith and intent, which could be useful in legal determinations. The American Research Libraries et al. (2012) expanded upon the good faith concept, adding that it should be accomplished using established standards and practices in the user's field. It should be noted that the Fair Use cases reviewed by Lyons (2010) and Gerhardt and Wessel (2010) did not involve educational institutions. However, the good faith factor's basic intent should still apply to education. If the educational institution makes every effort to ensure the Fair Use factors have been applied in a consistent manner with no malice intended, then this could persuade the courts to impose a lesser remedy

(Gerhardt & Wessel, 2010). Instead of a fine, the institution could receive an injunction to remove the content and revise their policy and processes.

Fair Use in the digital age. There is no debate in the literature that the Fair Use exemption can be used by education. However, Latourette (2006) stated Fair Use, as written in the 1976 version, only applies to the live classroom and not to online or distance education, although he did not provide additional data to support the statement. The majority of authors such as Robeson (2003) and DiRamio and Kops (2009) stated that Fair Use applies to online education and can be applied in conjunction with Section 110 provisions or independently. Additionally, Ferullo (2004) and Lipinski (2003c) referred to the Fair Use section as technology neutral and stated it could be used in any educational effort, which is exactly how the U.S. Copyright Office described Fair Use in its 1999 Report on Copyright and Digital Distance Education proposing the TEACH Act. Regardless of the ideals stated in the USCO report and in other literature, Gasaway (2010) stated Fair Use as a defense in digital infringement issues is being taxed as users seeking greater access under Fair Use and the owners seek the opposite. An interesting aspect of this battle is that copyright owners use the same technologies to block access that users employ to gain access (Gasaway, 2010). Gerhardt and Wessel (2010) implied that new technology's complexity required more time and considerable judgment making the argument that it is simpler to not use Fair Use. Until all parties can collectively work on developing a common understanding and agreement, this Fair Use battle will continue as improved technologies are developed.

The Fair Use exemption was written to provide a broad set of users the opportunity to assess and use copyrighted material without having to seek permission.

The four factors provide initial guidance useful in education, but it requires constant review, as each item and its specific use must be evaluated. In the ever-changing realm of education, where access and use of the latest information is necessary to ensure students have the necessary data to succeed; the Fair Use exemption can be cumbersome. Recognizing education's unique needs and its central role in promoting science and the arts, the Copyright Office included in the 1976 copyright law revision education specific exemptions under Section 110 titled, Limitations on exclusive rights: Exemption of certain performances and displays.

Performance and displays exemptions pre-TEACH Act. Unlike Section 107, where Fair Use is broad in scope and available to a larger set of copyrighted material users, Section 110 was focused on addressing specific types of performance and displays considered exempt (USCO, 1999). Lipinski (2003a) described the creation of Section 110 as a more direct approach to avoid the time consuming Fair Use approach. Section 110 is comprised of 11 subsections covering performance and display for a variety of different groups and uses ranging from religious activities, government bodies, or to display in a private home (17 U.S.C., 2011). In comparison to Fair Use, the United States Copyright Office identified that these exemptions only apply to performance and display and did not address reproduction and distribution (1999). These exemptions were intended to work in conjunction with not to replace Fair Use to support education's use of copyrighted material (Averill, 2003; Latourette, 2006).

The first two subsections were specifically written to address educational performances and displays in two unique course delivery methods reflecting education performance and display in 1976 (USCO, 1999). Section 110(1), commonly called the

classroom exemption (Gasaway 2001a; Irwin, 2007; Lipinski, 2003b&c), focused on the face-to-face live classroom environment. The language allows non-profit educational institutions to perform or display copyrighted material for the purpose of education unless it was illegally obtained (17 U.S.C., 2011). There are no limits defined in Section 110(1) providing instructors greater freedom to use copyrighted work to enhance the learning experience. Therefore, if an instructor decided to show a video, which is considered a display, the instructor can show the complete video without restrictions (Averill, 2003) as long as they do not give copies to the students. Additionally, the instructor can also perform any type of work such as a dramatic or non-dramatic play or read a poem without it being considered an infringement (Hutchinson, 2003). However, the exemption does not give an instructor carte blanche to use copyrighted material. USCO (1999) stated this exemption was written to allow use, but it was restricted to instructional intent. Therefore, an instructor cannot show a movie or perform a play to fill in blank time.

In comparison, Section 110(2) version addressed the distance education delivery method, which in 1976 primarily consisted of non-profit institutional transmission or broadcasting (Gasaway, 2001a; USCO, 1999). The exemption limited the institution to performances of nondramatic literary or musical work and displays of work (Hutchinson, 2003; Lipinski, 2003a) and this material must be directly relevant to the course topic (Lipinski, 2003b). This limitation created a disparity between live and distance courses, where a live course instructor could show a dramatic movie to help illustrate a teaching point but could not use it in a broadcasted class version (Gasaway, 2001a). This limited the types of courses institutions could offer via transmission and broadcasting. Section

110(2) also limited reception to classrooms and other instructionally dedicated locations or to students with disabilities who are limited in their ability to attend a live course (Irwin, 2007). When section 110(2) was developed, broadcasting was the primary distance education delivery method, but as digital technology became more available and powerful, educational institutions expanded to include digital transmissions and quickly highlighted the inadequacies of 110(2) (USCO, 1999).

TEACH Act History

Digital technology's educational benefits. As technology, especially advances in digital technology and the internet, integrated into and improved aspects of everyday life, it also vastly improved the capabilities and capacity of educational institutions. The most recognizable digital impact for education was the elimination for the necessity of a physical classroom to conduct learning (USCO, 1999). A second immediate impact was the flexibility that certain modes of digital distance education provided to meet schedule constraints faced by students with work or family commitments (Bernat & Frailing, 2015). The elimination of the classroom limitation and improved scheduling flexibility enabled institutions to reconsider the programs they could provide and the student population they could reach (USCO, 1999). Institutions could reach students who previously could not attend due to geographic distance or work and family schedule impacts (Carter, 2007). Individuals in rural areas could now have access to a larger set of options without having to travel great distances (Hutchinson, 2003). Digital technology vastly improved educational access to a larger audience and the number of options available.

New digital distance education technology and tools also changed how institutions and instructors developed and designed courses. Technology opened avenues to customize education to appeal to the various learning styles (Talab, 2008) as well as innovate the live classroom experience (Latourette, 2006). Prior to the digital age, instructors and institutions were limited in the type and access of material relevant to a course. Library budget and physical space limitations forced institutions and instructors to prioritize the material they wanted available for their courses and for student access. Digitization of books, magazines, and other material as well as increased internet capability, provided individuals with access to more information and the ability to expand their knowledge and awareness (Fisher & McGeeveran, 2006). The ease in which individuals can gain access and the increased capability exposes students to more ideas and data, improving the educational experience.

Digital technology's challenges. Despite the numerous benefits of digital technology, it added new challenges for instructors and institutions. A major concern was copyright, and some felt the existing law's challenges were detrimental to digital learning (Kolowich, 2009). The copyright user's concerns, especially in regard to education, were an impetus for Congress to consider copyright law changes (USCO, 1998). As institutions sought to use digital technology and distance education, they shortly discovered current copyright law did not account for the digital technology and its changes on how education was provided (Colbert & Griffin, 2007). Section 110(2) only addressed broadcast media, and there were too many questions on how Fair Use could be applied, forcing education to petition for guidance (Hutchinson, 2003).

Legislative response. In 1998, Congress drafted the Digital Millennium Copyright Act in response to recent international treaties regarding copyrights (USCO, 1998) and to address the digital distance education concerns and revise Section 110(2) (USCO, 1999). To address these educational concerns, Congress directed the U.S. Copyright Office to study the issue, integrate the concerns of all parties, and provide a report recommending whether changes were required and, if so, propose content (Gasaway, 2001b). The U.S. Copyright Office initiated the study and conducted a series of hearings with the affected stakeholders to gather data on the positions, recommendations, concerns, and impacts of changing copyright law (Kehoe, 2005). The varied opinions between owners and users centered less on the display and performance rights outlined in Section 110 but on digital technology changes to how copyrighted material could be reproduced and distributed (USCO, 1999). Unlike the use of hardcopy books, journals, and paper resources, where reproduction is laborious and results in low quality, digital copies are nearly identical to the original (Halme & Somervouri, 2012). Copies can also be consistently reproduced with no additional effort (Dougherty, 2010). Once these copies are in an individual's or institution's possession, the internet enables them to be sent to numerous locations instantaneously (Coyle, 2006; Evans, 2013).

The report stated there was a gap in copyright law regarding digital distance education and recommended changes to Section 110(2) intended to provide similar exemptions allowed for live classrooms (Kehoe, 2005). Unfortunately, due to the continued differences between the concerned parties, Congress could not codify changes in Section 110(2) during the two-year session (Colbert & Griffin, 2006). The USCO continued working with the interested parties to draft acceptable language (Yeh &

Jeweler, 2006). Congress, then led by Senators Hatch and Leahy, passed the TEACH Act, which was signed by President Bush in 2002 (Gasaway, 2001b). The TEACH Act's language completely revised Section 110(2) and added new requirements institutions must meet to implement and use the TEACH Act's benefits (Ashley, 2006).

TEACH Act Requirements and Benefits

Requirements. Though there are some similar aspects between the original 1976 and TEACH Act versions of Section 110(2), the U.S. Copyright Office recommended adding requirements that institutions needed to meet to implement the TEACH Act exemptions for distance education (Hutchinson, 2003). The TEACH Act's language was a compromise settled upon during the hearings and subsequent meetings between education and copyright owners (Irwin, 2007). The expanded and additional requirements addressed the copyright owner's concerns about digital technology's impact on transmission, reproduction, and distribution but allowed education more flexibility to use copyrighted material (USCO, 1999).

This compromise also changed who is responsible for ensuring the controls and systems are in place to properly ensure copyright is protected (Fruin, 2012). Fair Use, Section 110(1), and the previous Section 110(2) version, placed the primary responsibility upon the instructor (Crews, 2002). However, the TEACH Act redistributed the responsibility across several organizations and individuals within an institution (American Library Association, n.d.). Therefore, for an instructor to use copyrighted material in a course with digital transmissions, other groups must now ensure they have met the TEACH Act's requirements (Dahl, 2004). Crews (2002) identified three main groups responsible in meeting the TEACH Act's requirements: institutional

policymakers, information technology, and instructors. In order for successful TEACH Act implementation, each group must ensure they understand its responsibility and cooperation between all groups is required.

Institutional policymakers. Crew (2002) identified policymakers as the first group because the requirements associated with it provide the foundation for successful implementation. The Act required institutional compliance through defining the types of applicable institutions as well as establishment of policies and processes to manage the TEACH Act. Each of these requirements must be in place and managed before an instructor or department can consider using material in the digital environment.

Institutional applicability. The first requirement addressed the type of institutions allowed to apply the exemption. The language stated that only accredited, non-profit educational institutions or government bodies can implement the TEACH Act (Crews, 2010). The change from the previous version was the addition of the term *accredited* as a modifier as it applied to educational institutions. The addition of *accredited* resulted from copyright owners concerning the growth of distance education provider's to non-traditional education sources and corporate entities (Kehoe, 2005). The owners contended that accreditation provided an ability to assess an institution's processes and ensure compliance and quality assurance (USCO, 1999). Section 110(11) states accreditation must be "determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education" (USCO, 2011, p. 29). The addition was intended to prevent establishment of new non-profit distance educational organizations to take advantage of the law (Lipinski, 2003a).

Policy, processes, and practices. The next area addressed two policymaker requirements related to institutional policy, processes, and practices. First, institutions must establish formal copyright policies that “accurately describe and promote compliance” (U.S.C. 17 § 110(2)(D)(i), 2011) with the TEACH Act as implemented in the institution (Yeh & Jeweler, 2006). However, the TEACH Act did not provide specific direction of what must be included in the policy (Nelson, 2009). It also did not state whether the policy should only be TEACH Act related or address all aspects of copyright as it pertains to the institution (Hutchinson, 2003). Second, the TEACH Act required the institution to inform faculty and staff about the TEACH Act policy and their specific implementation and management roles and responsibilities (Dahl, 2004). Similar to the policy requirement, the TEACH Act did not provide specific guidance allowing each institution to develop policies, processes, and practices related to its unique educational model and management philosophy.

Student enrollment and notification. The final pair of policymaker requirements focused on students. The TEACH Act required institutions to ensure only students enrolled in a course can gain access to the material (Reyman, 2006). The requirement’s intent was to ensure only authorized individuals had access and not to have the material on an open system where any individual could access and redistribute it (Colbert & Griffin, 2007). The final requirement stated institutions must provide students with notification that copyrighted materials are used in the course (17 U.S.C., 2011). With the policies, processes, and practices developed, the institutional policymakers established the framework for the other stakeholders to meet their unique TEACH Act requirements.

Information technology. With institutional policy in place, information technology departments can build the infrastructure and associated controls. The requirements attributed to information technology guide departments in establishing boundaries and protection methodologies. The results of these efforts reduce the amount of variability available to instructors and consistency between courses.

Restrict access. The first information technology requirement supports the policymaker's requirement of limiting access to enrolled students. The TEACH Act requires institutions to install technologically feasible measures limiting access (Reyman, 2006). U.S.C. 17 § 110(2) does not provide further guidance regarding the technology considered adequate to meet this requirement (Kehoe, 2005). Since the language required technical feasible solutions, the majority of the literature identified password protection as a reasonable solution (Oman, 2008; Carnevale, 2003). However, Hutchinson (2003) stated password protection only meets the technical requirement on unauthorized access and is not a feasible solution for other technical requirements such as unauthorized reproduction and dissemination. In its 1999 report, the U.S. Copyright Office listed recognized methods to limit access as well as tools recognized for the other requirements such as dissemination. This initial list provided institutions with a starting point in addressing the TEACH Act's various requirements.

Limit dissemination. Once a digital copy is available, technology's ability to distribute to multiple individuals nearly instantaneously was a major copyright owner concern during the TEACH Act drafting (USCO, 1999). The TEACH Act addressed this issue requiring the technical solutions should reasonably limit further dissemination in an accessible form (U.S.C. 17, 2011). Potential technical solutions vary based on file format

such as the use of streaming media for video or control features coded in programs or learning management systems (Ashley, 2004). Since each institution's educational system is unique, there was no single technical solution available. Each institution must develop its own solution set requiring the institution to make a determination of what is reasonable (Hutchinson, 2003).

Prevent retention. The next information technology requirement focused on limiting copyrighted material retention for no longer than a class session (Crews, 2003). Similar to the dissemination requirement, there are different methods, capabilities, and technology available. Yeh and Jeweler (2006) outlined the use of a broadcast flag feature limiting retention of broadcast television, and Nelson (2009) highlighted time restriction features in learning management systems as a couple of methods available. The main issue information technology departments faced in meeting this requirement was in defining a class session (Latourette, 2006). The definition may be dependent on the type of course delivery such as an asynchronous distance course or live course with digital transmissions (Reyman, 2006). The definition or definitions may require a coordinated effort between all three groups and potentially codified in policy.

Interference with technology protection measures. The final requirement stated an institution should not engage in an action disrupting or intentionally overcoming digital protection measures the owners put in place (Dahl, 2004; Reyman, 2006). The exclusive rights granted copyright owners the ability to control reproduction and dissemination and empowered them with the ability to institute protection methods necessary to maintain their rights (USCO, 1999). While the TEACH Act provided users an exemption, this final technology requirement ensured institutions would honor the

protection measures and work with owners to determine the proper method to get permission (Hutchinson, 2003; Latourette, 2006). This final technology requirement's impact can be tied to the continual and rapidly increasing digital capability with improved tools or software that may overcome protection measures (Depoorter, 2009). For educational institutions, technology can be beneficial and detrimental as applied to copyright requiring diligence by the information technology experts. With the policies and processes developed and the technical infrastructure in place, the final requirements group, the instructors, can fully design and implement TEACH Act compliant courses.

Instructors. The instructor requirements dealt with the individual tasks necessary to design and manage courseware in the digital realm (Crews, 2003). This group of TEACH Act requirements and responsibilities were more consistent with the Fair Use and Classroom exemptions where the onus is on the instructor to ensure content compliance.

Instructor supervision. The primary instructor requirement is that any performance or display used in a class session must be created by, or under direct supervision, of the instructor (U.S.C. 17, 2011). Gasaway (2010) expanded upon this requirement by implying student-developed works would be authorized as long as the instructor provided oversight. The expanded concept of supervision also applied to other institutional entities such as the library or information technology department (Irwin, 2007). The intent was not to require the instructor to generate all the content but that they guided the work and ensured compliance (Yeh & Jeweler, 2006).

Integral and directly related to course objectives. The next two instructor requirements addressed content relevance to educational intent. Prior to digital

technology, instructors were limited on the amount of material they could provide and focused on only primary sources (Irwin, 2007). Digital technology expanded an instructor's ability to upload digital copies without the same expense of purchasing hard copies (Hutchinson, 2003). The TEACH Act addressed this concern by requiring that the material be integral to the class session meaning supplemental material not specifically used in the classroom was not authorized (Lipinski, 2003a). Additionally, the material must be directly related to the course (Gaide, 2005). Instructors are not to use performances and displays only for entertainment purposes; the material must be related to the course and support a learning objective (Dahl, 2004). Finally, the instructors were allowed to only use performances or displays of a nondramatic literary or musical work, performances or displays of a reasonable or limited portion of any other work, or displays of a work in an amount comparable to works typically used in a live classroom (USCO, 1999).

Products developed for distance education. To protect the market for products developed for distance education, the TEACH Act stated only legally acquired copies could be used (S. Rep. No. 107-31, 2001). This market includes items marketed for students and typically purchased as part of the course such as textbooks or course packs (Yeh & Jeweler, 2006). It also included material the instructor identified and worked with the library to provide for students (Irwin, 2007). The digital technology advantages must be carefully reviewed and requires the instructor to completely review each item to ensure it is properly used.

Benefits. While the requirements seem daunting, there are benefits gained in implementing the TEACH Act. First and foremost, the TEACH Act completely replaced

Section 110(2), which was not written to account for technology improvement (Crew, 2003). Even though the TEACH Act represented a compromise between owners and instructors, it enabled institutions to improve digital education quality to closer match the live classroom experience (Nelson, 2009). The literature identified several benefits to include classroom definition and works allowed.

Classroom definition. The TEACH Act removed the classroom definition limiting transmissions to other physical classrooms (Crews, 2002). Transmissions could be received at a location of the student's choosing and timing (American Library Association, n.d.). The higher quality digital courses allowed institutions to reach a broader audience, especially working students and those in rural areas not able to accommodate an in-residence program (Carter, 2007). Improved and increased number of distance programs added to an institution's reputations and increased overall enrollment.

Expanded works allowed. The TEACH Act expanded the types of works allowed for use in distance education beyond the 1976's limit to non-dramatic works (Crews, 2002). The revision added the performance of limited portions of dramatic works and the display of a work comparable to a live classroom (U.S.C., 2011). The expansion enabled instructors the freedom to pick from a larger set of examples to improve the learning environment.

Additional benefits. The literature identified several ancillary TEACH Act benefits. In its 2001 report on the TEACH Act, the Senate expanded upon the proposed language by allowing the storage of digitized data to support digital transmissions, for historical purposes, and was not considered an infringement (S. Rep No. 107-31). The

ability to store digital material specifically benefits asynchronous courses where there is not a specific class period and access is random (Gaide, 2005). The last benefit allowed instructors to digitize analog material when no digital copy is available (Gasaway, 2001a). However, this did not authorize random digitization; it required the instructor to make every effort to find a digital copy (S. Rep No. 107-31, 2001). The benefits provided institutions with an opportunity to bring distance education on par with live offerings. The TEACH Act's specific language caused many institutions to reconsider implementation and these perceived issues were the primary focus in the literature.

Perceived TEACH Act Issues and Limitations

Although the TEACH Act's intent was to open opportunities for distance education, it created more controversy and concern focused on the specific language used. The literature provided a good background in the history leading to the TEACH Act; the steps leading towards enactment; and, a brief overview of the benefits. The primary focus addressed the potential implementation issues and limitations identified in the TEACH Act's specific language. The issues centered on ambiguous terminology used in the TEACH Act's implementation requirements. Gaide (2005) stated the language allowed for interpretation but created frustration for institutions seeking to codify the TEACH Act in policy. The balancing act opened the potential for misinterpretation and the potential for legal issues (Latourette, 2006). As institutions considered TEACH Act implementation they needed careful consideration on language interpretation.

Mediated instructional activities. The TEACH Act used the term mediated instructional activities in two sections (U.S.C. 17, 2011). The question posed in literature

related to what mediated meant and how much instructor interaction is required (Irwin, 2007). In Section 110(2)(A), the TEACH Act further stated the work performed or displayed must be “made by, at the direction of, or under the actual supervision of an instructor” (U.S.C. 17, 2011, p. 25). Based on this language, multiple authors assumed it required direct instructor control in how copyrighted material is managed in all course activities (Hutchinson, 2003; Reyman, 2006). Using this same interpretation, Fruin (2012) implied mediated instructional activities did not apply to the asynchronous learning environment because the instructor did not have direct control. These concerns were raised during the TEACH Act’s Congressional review and the Senate stated the law did not require constant instructor control and real-time supervision, nor did it imply asynchronous courses could not use the TEACH Act’s benefits (S. Rep 107-31, 2001). Despite the Senate’s statements, there were still issues raised on works developed by other departments such as libraries and students, and the required level of instructor participation (Irwin, 2007). As institutions implemented the TEACH Act, these questions needed to be answered and included in the processes and policy to guide instructors in their roles and responsibilities.

Reasonable and limited portion. The TEACH Act expanded the types of copyrighted material that could be digitally transmitted but not to the same level as the live classroom (Crews, 2002). For presentations of other than non-dramatic works, only reasonable and limited portions could be used (Lipinski, 2003a). However, there is no definition of what is considered reasonable and limited (DiRamio & Kops, 2004; Lyons, 2010). If an instructor can present an entire work in a live classroom, then it presents the question of what can be shown in a distance education course. Senate Report 107-31

(2001) stated institutions should account for the work's market impact as well as the pedagogical objectives the work is intended to meet in defining reasonable and limited. While the Senate Report provided key questions to consider, it did not provide answers leaving institutions to develop their own. The dilemma institutions faced was that one person's or organization's determination of reasonable and limited may not be the same as another person or organization. To meet this requirement, an institution's definition should be thoroughly researched and the process developed for instructor use.

Comparable to live classroom. Similar to the performance limitations, displays of copyrighted work are restricted. Displays in the digital environment must be comparable to what is used in the live setting (U.S.C. 17, 2011). Comparable was the key word the institution needed to define. Consider the following scenario: During course design, an instructor identified four copyrighted works supporting the learning but determined only two could be used, possibly due to time constraints. If the same course were provided as distance education, the unknown variable becomes what the comparable use of copyright material would be, whether all four or merely two? In the digital environment, it is as easy to provide all four items as two. Lipinski (2003b) identified that this requirement did not provide an institution with the latitude to upload more data than was used in a live course. In defining *comparable*, Carter (2007) cautioned institutions to review library reserves and recognize comparable may also apply to this part of a course.

Class session. A primary benefit of distance education allowed students to attend a course on their schedule without having a class session with a set date and time (Nelson, 2009). The TEACH Act required institutions limit student retention of

copyrighted work for no longer than a class session (U.S.C. 17, 2011). Distance education's flexibility benefit did not provide a class session definition similar to a live scenario. The language's intent was to ensure copyrighted works were only available for a defined period of time to support learning (Gasaway, 2001b; Latourette, 2006). The difficulty of defining an online class session is tied course design and learning objective. An asynchronous course class session may be more difficult to determine than a distance course delivered similarly to a live course. In reviewing this language, Congress stated that flexibility in definition was necessary, but institutions need to make a common-sense determination (S. Rep No. 107-31, 2011).

Technically feasible. Institutions are required to ensure transmissions are limited to enrolled students when technically feasible (U.S.C. 17, 2011). The intent was to limit access to copyrighted content and not have it uploaded on a public system for anyone in the institution to gain access (Colbert & Griffin, 2007). This requirement initiated debate on whether password protection was adequate. The majority opinion is that password protection meets the intent and has continued to be the prevalent concept throughout the years (Carnevale, 2003; Disclafani & Hall, 2012). However, technology is not a one-time investment and as digital technology continued growing in capability, password protection may prove inadequate to limit access (Colbert & Griffin, 2007). Institutional process and capability reviews are required to ensure the institution meets the TEACH Act's intent.

Reasonably prevent. Institutions are required to implement technical solutions to reasonably prevent retention and dissemination. The issue is related in defining what is *reasonable*, adding to the complexity of implementation. Lipinski (2003a) and

Carnevale (2003) suggested reasonableness does not equate to requiring a 100% success rate but is a measure of intent to comply with the law. While this explanation helped ease some concerns, it does not definitively define the term *reasonable*. What one person or organization may consider reasonable may not be considered reasonable by another organization or in the future (Ashley, 2003). With respect to password protection limiting access as a potential solution, Hutchinson (2003) stated that password protection does not prevent further dissemination, requiring additional technology and increasing the cost of implementation and sustainment. The investment is compounded as each technology used or copyrighted work data format may require a unique reasonable prevention method or tool. Nelson (2007) implied that preventing dissemination is harder than retention and required additional investment. Finally, technology is constantly improved in capabilities overcoming prevention techniques and tools. While the TEACH Act does not require upgrades, not improving technical capability would not meet the reasonable intent (Colbert & Griffin, 2007). Maintaining reasonable prevention technology has added to long-term investment strategies.

Policy development. The TEACH Act's ambiguous language also affected the requirement to develop copyright policy. The TEACH Act stated copyright policy must be created, but it provided nothing more than basic creation (Nelson, 2009). The Senate Report (2001) did not expand upon what was intended in the policy requirement. Only Latourette (2006) provided additional considerations that policy should state the institution's intent to comply and define standards faculty and staff must meet to use copyrighted material in digital transmissions. However, if policy attempted to accurately define and describe each ambiguous terminology in every requirement, it can delay the

implementation even to a point of non-implementation (Gaide, 2005). On the other side, policy uncertainty led individuals into making uninformed decisions (Depoorter, 2009) and opening their institution to legal action. A well-defined policy is the foundation required for other requirements to be implemented (Hutchinson, 2003) and should be considered the most critical element of a TEACH Act implementation plan.

To implement or not? The issues and limitations addressed are cited as reasons why there seems to be little evidence that the TEACH Act is being widely implemented (Gaide, 2005; Oman, 2008). As institutions review the limited data associated with the TEACH Act, they must question if they have the time, skills, and resources required for success (Ashley, 2003; Fisher & McGeeveran, 2006). Colbert and Griffin (2007) suggested individual institutions likely did not have the ability to sufficiently address the TEACH Act's requirement, especially smaller institutions (Gerhardt & Wessel, 2010). To overcome these obstacles, institutions need to have examples of successful implementation and best practices they can use in their endeavors.

Best Practices

Since the TEACH Act enactment in 2002, numerous articles outlined the perceived issues and limitations. Many provided general suggestions on how to address the issues, but there have been no significant studies on the success of any implementation activity, initiatives, or lessons learned. In an attempt to guide institutions considering the TEACH Act, several authors pointed the reader to schools that have implemented the TEACH Act such as the University of Texas or North Carolina State University, and indicated a willingness to share information (Crews, 2003; Duncan, Clement, & Rozum, 2013). However, these websites provided only basic information

and not how the institution addressed specific TEACH Act provisions (Gerhardt & Wessel, 2010). The lack of centralized data addressing specific TEACH Act requirements or a class of best practices added to the TEACH Act Implementation dilemma. Regardless, the literature indicated several critical focus areas institutions should consider in their implementation efforts. Despite a lack of direct data, across the literature the authors attempted to provide ideas and suggestions of best practices that can be grouped into key areas such as policy, faculty awareness, technology, and cooperation.

Policy. To create and maintain quality education, access to and the use of the latest information required instructors and institutions to work with copyrighted material. To ensure consistent copyright application, policy establishment was highly recommended (Smith, Eddy, Richards, & Dixon, 2000) in the pre-TEACH Act period and now required under TEACH Act (U.S.C. 17, 2001). Well-defined policy created the structure necessary to encourage proper use and develop respect for the process (Association of American Universities, Association of Research Libraries, Association of American University Presses, & Association of American Publishers, 2005).

Developed by committee. Digital technology changed the copyright environment by transferring copyright responsibilities from primarily the instructor to across the institution (Hutchinson, 2003). The TEACH Act's complex requirements demanded the insight of multiple experts. The use of an interdisciplinary committee is recommended (Oakley, Pittman, & Rudnick, 2008) as a method to ensure consistency as copyright law and technology changes. Committee membership will vary from institution to institution dependent upon structure but it is recommended experts in the following areas be included and expanded as needed: administration and policy; faculty; information

technology; instructional design; legal; and library services (Gaide, 2005; Latourette, 2006). Oakley, Pittman, and Rudnick (2008) emphasized the importance of having librarians on the committee, as librarians tend to work with copyright issues more frequently than faculty and other offices. Once the committee is established, data should be assembled to prepare the membership to develop policy (Gaide, 2005). The 2005 *Campus Copyright Rights and Responsibilities: A Basic Guide to Policy Considerations* developed by a consortium of the Association of American Universities, the Association of Research Libraries, the Association of American University Presses, & the Association of American Publishers, provided a concise review of educational copyright law and considerations for policy development and is recommended for any institution beginning any copyright policy development.

Structure and format. The major task faced in policy development is how to structure, what to include, and the level of detail necessary. Section 110(2) required institutional policy creation, but since the section only addressed the TEACH Act it was questioned if the TEACH Act was all that should be included (Hutchinson, 2003). The TEACH Act is not the only educationally related exemption in copyright law with Fair Use (Section 107) and the Classroom Exemption (Section 110(1)) available (Biswas & Russo, 2012). The literature indicated that the TEACH Act and Fair Use are not mutually exclusive and highly recommended institutions combine the use of the two sections for distance education (Dougherty, 2010; Fruin, 2012). Irwin (2007) stated the Fair Use section's four factors could be used as a framework supporting TEACH Act considerations making stronger decisions. This linkage suggested establishment of comprehensive copyright policy is the best approach.

With the determination of what to include completed, the level of detail is the next task to be addressed. Merely repeating what is stated in copyright law is not recommended, as it does not address individual and organizational expectations and standards adding to misinterpretation (Wiggins, 2011). A clearly stated mission and commitment to copyright (Latourette, 2006), defined terminology and processes (Hutchinson, 2003), and stated individual roles and responsibilities (Wiggins, 2011) should be considered. However, policy is not intended to be written to a level of detail to cover every situation but to establish the framework from which more precise rules and guidance can be developed further reducing the uncertainty (Depoorter, 2009). For unique processes, it was recommended to develop sub-level policies, processes, and guidelines as a best practice (Talab, 2008). At the development process's conclusion, if an institution made a good faith effort in defining policy, there is a stronger likelihood legal actions will not result in a major finding (Irwin, 2007).

Procedures and guidelines. With the institutional copyright structure established in policy, detailed processes and procedures can be defined in faculty or department guidelines specific to their unique assigned roles and responsibilities (Latourette, 2006). Procedures and processes documented in guidelines remove the difficulties faculty faced in trying to apply informal practices (Dobbins, Souder, & Smith, 2005). Faculty guides should outline the steps and expectations faculty are required to authorize use of copyrighted material (Biswas & Russo, 2012). It is in these guidelines where TEACH Act ambiguity can be addressed such as what is *reasonable* and *limited* (Latourette, 2006). Colbert and Griffin (2007) and Irwin (2007) suggested the classroom guidelines developed for Fair Use as a consideration but also indicated these limits should be

reviewed before adopting outright. Other steps and concepts such as seeking permission as the preferred solution (Mohr, 2004), use of public domain or factual versus artistic material (Biswas & Russo, 2012), and use of links versus uploading a file (Wiggins, 2011). Duncan, Clement, and Rozum (2013) stated guidelines should illustrate how to measure the risk to the institution and acceptable levels.

Faculty awareness. While the law stated institutions provide informational material to faculty, staff, and students on copyright policy and practices, there were many questioning whether it is adequate in ensuring compliance (Lipinski, 2003c). The consensus was that formal education is considered a best practice (McDermott, 2012; Wiggins, 2011). Copyright education is not a specific TEACH Act related idea. Kordsmeier, Gatlin-Watts, and Arn (2000) published findings indicating that a lack of copyright awareness in instructors contributed to infringements, and as a result, they recommended formal education. Lack of copyright awareness continued to be identified as an improvement area when a 2014 study indicated barely 60% were aware of the TEACH Act (Charbonneau & Priehs). Duncan (2013) stated a reason for this is instructors are too busy with research and teaching to maintain currency further supporting education as critical best practice.

Copyright education is available commercially for purchase, but it should be determined whether it will address an institution's unique copyright policy and practices. Wiggins (2011) stated education should clearly address the rules and processes and commercial courses may not meet the need. The use of specific case scenarios was suggested as a technique to help faculty practice making copyright decisions in a benign environment (Charbonneau & Priehs, 2014; Latourette, 2006). Graveline (2011)

suggested a two-tiered education approach with a small cadre; librarians in this instance, getting educated and possibly certified first and then have the cadre provide education to the rest. Formal testing was identified as a practice providing an institution assurance faculty and staff members are proficient in copyright processes and procedures (Wiggins, 2011). Finally, education should be frequently updated and refresher training required as legal opinions affect and change laws and, in the case of distance education, technology can impact copyright application (Graveline, 2011). Continued changes in copyright will require an institution's constant awareness potentially requiring the task assigned to an individual or office.

Establish a copyright office or czar. The use of a committee allowed institutions to craft copyright policy, but copyright law is not stagnant and requires continued vigilance. Latourette (2006) recommended establishing a standing committee focused on addressing copyright issues proactively. Whether a formal and unique copyright office is founded would be dependent upon the institutions need and resources. Smaller institutes could be limited, and it is recommended they consider establishing copyright expertise in an existing office (Oakley, Pittman, & Rudnick, 2008). The highest recommended organization is the library (McDermott, 2012). Historically, libraries and librarians are experienced in and have dealt with copyright issue more frequently (Crews, 2002). Librarians are also likely to have supported course development and are aware of these processes (Bernat & Frailing, 2015). Once the copyright office or expert is established, it is recommended sufficient resources be provided for the experts to conduct professional development and research to maintain expertise (Disclafani & Hall, 2012).

Technology. If policy and processes provided the foundation for a successful TEACH Act implementation, then digital technology capabilities provide the framework. Established institutional level capabilities such as a central course development department (Davis, 2006) or a learning management system (Talab, 2008) ensure consistency across departments. Technology is required to be compliant in limiting access and preventing retention and dissemination. Different tools and techniques such as streaming media (Ashley, 2004), digital keys (Lipinski, 2003a), or persistent URLs (Davis, 2005) must be identified and researched in comparison to the institution's requirements and policy. Finally, an institution must be prepared to keep current on technology (Carter, 2007). Recent technology such as Massively Open Online Courses must be assessed to determine if current policy and processes are sufficient or if new ones are required (Charbonneau & Priehs, 2014; Dames, 2013).

Cooperative action. Literature indicated that the complexity of copyright laws, especially the TEACH Act, increase difficulties for a single institution to adequately address all aspects, especially for smaller institutions (Colbert & Griffin, 2007). Bernat and Frailing (2015) recommended working in a collaborative environment with other institutions and agencies. Organizations such as the American Library Association (Carnevale, 2003) and educational institutions such as North Carolina State University (Colbert & Griffin, 2007) have established available resources for institutions to use. An example of collaboration is how Excelsior College entered into an agreement with John Hopkins University to provide copyright expertise (Disclafani & Hall, 2012). The effort allowed Excelsior College to be copyright compliant without expending limited resources to create its own organization.

Best practice lessons from Fair Use. Fair Use faced several of the same challenges identified for the TEACH Act such as ambiguity and the lack of definitive guidance (Netanel, 2011). Since its enactment in 1976, Fair Use has been challenged through court cases providing some additional level of guidance in terms of legal opinion and precedent (Latourette, 2006). Despite the additional guidance, individuals and organizations working in an industry such as documentary filmmaking still faced infringement cases because the law was ambiguous and the industry had not established standards to guide Fair Use in their industry (Aufderheide & Jaszi, 2011). The Center for Social Media conducted a study on documentary filmmaking copyright practices and identified a majority avoided the use of copyright material, although the use most likely would be considered Fair Use (Aufderheide & Jaszi, 2011). Based on this study, the Center for Social Media worked with the documentary filmmaking industry to create the *Documentary Filmmaker's Statement of Practices in Fair Use* issued in 2005 (Aufderheide & Jaszi, 2011). Over time, the statement gained ground in use and acceptance by the industry and the organizations airing documentary films. Given the documentary filmmakers' success, other industry groups such as Online Video, Open Course Ware, and Film and Media education has created their own Fair Use codes of best practices (Aufderheide & Jaszi, 2011). These efforts illustrate how groups facing the same problem can come together to develop a solution providing the guidance and boundaries acceptable by the users and the owners. The TEACH Act may benefit from this same best practice and this study may provide the initial data necessary to develop codes and statements.

Summary

The TEACH Act was enacted in 2002 to address the gap in copyright law between live and distance education courses. Due to copyright owners' concerns about digital technology impact on their exclusive rights, the TEACH Act contained requirements institutions must meet to be compliant. The requirement's complexity and the TEACH Act's ambiguous language were identified as a primary reason why institutions were not implementing the TEACH Act. Review of available TEACH Act literature uncovered a lack of any data on successful implementations or lessons learned. The literature primarily focused on the TEACH Act's perceived issues with no specific examples of best practices. Therefore, the author designed the review to establish an understanding of basic copyright and then focus on educational related copyright provisions. Next, the reader is provided with a history leading to the TEACH Act followed by the TEACH Act's requirements, benefits, and perceived issues. Identification of possible best practices concluded the literature review.

The Constitution established the principle of copyright in Article I, Section 8 of the Constitution where Congress was granted the power to secure authors exclusive rights to their works for a limited time. To promote sciences and the arts, Congress recognized a need to balance the owner's rights with user's desire to provide use the material. To accommodate the users, the Copyright Act of 1976, which is the current version, includes three exceptions educational institutions could apply: Section 107, Fair Use, and Sections 110(1) and (2) related to classroom performance and display.

Fair Use allowed the use of copyrighted material without gaining the owner's permission for numerous distinct purposes to include educational areas such as teaching,

scholarship, and research. The exemption required the user to assess the use of each item against four factors: purpose and character of use; nature of work; amount and substantiality of the portion used; and, the effect on the market. The exemption did not provide any specifics requiring the user to make its own interpretation leading to misconceptions and legal actions. As a result of the legal decisions, the interpretation of the factors fluctuated between market value being the most important to the current view of a balance of all four factors. The courts also recognized an unstated fifth factor of institutions and users acting in good faith in their Fair Use assessment.

Sections 110(1) and 110(2) were performance and display exemptions created specifically for the live classroom and distance education, respectively. Section 110(1), known as the classroom exemption, allows instructors to perform or display any relevant material in the course of a class. Section 110(2) limited instructors to nondramatic literary or musical performances and displays of work only through transmission or broadcasting to other classrooms or special needs students. When the law was drafted, broadcasting was the primary distance education technique. As digital technology increased capabilities, the state of distance education changed but copyright did not.

Congress recognized that the inadequacies in copyright law related digital technology and distance education. In 1998, it directed the U.S. Copyright Office to study the issue and report on recommended changes in the law. The initial study recommended providing the same level of exemption given to live classrooms in Section 110(1). Copyright owners disagreed with the recommendation stating digital technology enabled users to make inexpensive exact copies and distribute it nearly instantaneously to a large audience, which were infringements of their exclusive rights. Through a series of

negotiations, the Copyright Office drafted a new recommendation adding a series of institutional requirements. Congress approved this version and the TEACH Act was enacted in 2002.

Unlike the requirements in Fair Use and the classroom exemption where the requirements were primarily the instructor's responsibility, the TEACH Act requirements were expanded to include the institution policymakers and information technology. The TEACH Act required the institution to meet expanded applicability criteria with the addition of accredited as a qualifier to the non-profit requirement for Section 110(1). Establishment of formal copyright policy and informing faculty and staff about the policy was the next requirement. Finally, institution policymakers addressed the students. Institutions were to limit access to only registered student and must provide them awareness copyright material would be used. The institutional requirements established the foundation necessary for information technology and instructors to meet requirements.

Information technology's requirements focused on providing reasonable and feasible technical solutions to restrict access to registered students, limit the ability to further disseminate material, and prevent reproduction. The TEACH Act did not provide guidance on specific techniques or technologies allowing each institution to make its own decision on which solutions to employ. The final requirement stated institutions could not intentionally overcome digital protection the owner's installed.

Instructor requirements focused on the design and management of courseware. Materials used in the class session must be under instructor supervision. This requirement allowed students to develop performances or display copyrighted material

but required the instructor to be aware and approve the work. Second, all material must be assessed as integral and relevant to the course learning objectives for the class session. Finally, instructors were not allowed to freely provide material developed for distance education. This applied to items such as textbooks or course packs and intended not to allow students to avoid paying for relevant material.

Despite the added requirements, the TEACH Act provided several benefits over the previous version of Section 110(2). The classroom was expanded beyond the physical classroom requirement allowing for institutions to reach students with time and geographic limitations. The TEACH Act also expanded the works allowed adding limited portions of dramatic works enabling distance instructors to use the same video and audio works found in the live classroom. Finally, the TEACH Act authorized limited digitalization capabilities when no digital copy was available.

The TEACH Act enabled institutions to create distance education on par with the live classroom, but the law's language added confusion and complexity. Since enactment, scholars have analyzed the language and identified numerous ambiguous terminology and phrases with the potential to impede implementation. The TEACH Act incorporated phrases such as reasonable and limited portion, comparable to live, class session, technically feasible, and reasonably prevent with no additional detail or definition. Institutions were left to develop their own interpretation of the law. A major interpretation question highlighted in the literature related to what is a *reasonable* and *limited portion*, is the question of how much of it must be a percentage of the original content. Institutions were concerned owners may not agree with their interpretation and file an infringement lawsuit. Scholars concluded the ambiguity and interpretation issues

were the main reason why institutions were not implementing the TEACH Act and there did not exist a good set of examples or best practices to overcome the issues.

The literature sporadically addressed potential best practices with no single concept being identified consistently and there were no formal research or studies accomplished confirming the viability of any practice. Despite the lack of direct data, the author identified several key common practices or concepts where best practices could be developed. Development of policy using a formal interdisciplinary committee was recommended in several articles but there were varied opinions on the structure and content. Having the faculty read the policy would likely have satisfied the faculty awareness requirement but the literature recommended creation of formal education providing faculty and staff with the institution's process and their roles to be compliant. The potential best practice themes and topics identified through the review provided the author with a starting point to begin designing the study.

CHAPTER THREE: METHODOLOGY

Introduction

The study's purpose was to identify the tools and processes used by successful non-profit post-secondary institutions implementing the TEACH Act. When the Copyright Act of 1976 was enacted, distance education as it is currently defined and the current digital technology capabilities did not exist. Educational-based exemptions were designed to support the current course delivery methods employed at the time (USCO, 1998). As digital technology expanded, it created opportunities for educational institutions to revise how they deliver courses reaching a larger student population (Hutchinson, 2003). However, copyright law had not been adjusted to reflect the changes, impacting distance education's ability to use copyrighted material (Irwin, 2007). Congress recognized this gap and charged the U.S. Copyright Office to study the issue and provide recommendations (USCO, 1998). The recommendations targeted reducing the copyright barriers for distance education and providing exemptions similar to those available to live classrooms and led to the TEACH Act's enactment (USCO, 1999). The TEACH Act's language was ambiguous adding more confusion and concern regarding legal repercussions than benefits (Carnevale, 2003; Irwin, 2007). The lack of definitive guidance impeded institutions from implementing the TEACH Act and, therefore, was considered a new barrier to distance education (Ashley, 2004; Colbert & Griffin, 2007). While some institutions implemented the TEACH Act, such as University of Texas and North Carolina State University, the data made available about implementation efforts was neither comprehensive nor consolidated adding to further decisions not to implement (Graveline, 2011; Reyman, 2006). This study's intent was to research numerous

institutions' successful TEACH Act implementation, gather data to identify best practices and lessons learned, and create initial consolidated TEACH Act guidance. The guidance should reduce confusion, provide multiple examples or approaches, and encourage institutions to consider the TEACH Act.

Research Question

Copyright law was developed to promote the sciences, which has a direct connection to education as a knowledge provider in the sciences (Hutchinson, 2003).

The Copyright Act of 1976, Title 17 U.S.C., specifically added education focused exemptions providing instructors more flexibility in using and presenting copyrighted material but did not allow for the impact of digital technology (USCO, 1999).

Addressing digital technology as it applied to education, Congress enacted the TEACH Act to provide a comparable exemption to the live classroom. However, the TEACH Act added a level of administrative, technical, and legal burden on institutions not required in the previous law to accommodate the copyright owner's concerns (Kehoe, 2005).

Institutions were faced with interpreting ambiguous language with no guidance and limited examples or best practices found in literature reviews or website searches. The lack of any compiled set of guidance or practices increased an institution's decision to not attempt TEACH Act implementation and, thereby, decrease its ability to support distance education with exempted use of copyrighted material. The lack of any central set of guidance, best practices, or lessons learned was the major impetus for this study. The following research question guided this qualitative study: What are the processes, policies, and tools of a successful TEACH Act program in accredited non-profit post-secondary educational institutions?

Research Design

The literature review did not provide substantial evidence indicating existence of supported theories, policy or guidance definition, or best practices regarding TEACH Act implementation. Literature analysis identified several general suggestions on how an institution might consider addressing the law. However, there were no data or studies conducted to indicate the success of any proposed suggestion or how those few successful institutions implemented the TEACH Act. Several factors such as the law's ambiguity allowing for implementation strategy diversity, lack of definitive data, limited number of successful institutions, and intent to identify the process or procedures were considered in designing the research approach. Based on these factors, the author selected a grounded theory qualitative approach in determining TEACH Act best practices and lessons learned.

According to Creswell (2014), grounded theory methodology allows the researcher to use data gathered from multiple sources to develop a concept of a process' existence. The literature review revealed the existence of several institutions implementing the TEACH Act, indicating the potential for defining an implementation process or processes. However, determination of best practices and lessons learned required more than observing a few examples, and the use of different tools and techniques was necessary. Grounded theory is designed to use multiple data collection tools and stages to help the researcher focus the data collection (Creswell, 2014). The author initially decided on two tools and stages for data collection but ended up adding a third method to gather data necessary to support the analysis, conclusions, and recommendations.

Participants and Data Sources

The TEACH Act (U.S.C. 17, 2011) defined the type of organizations or institutions that could use the exemption to “government body or accredited non-profit education institutions”. While the TEACH Act language did place a limit on eligibility, the scope of institutions that could implement the TEACH included government offices and agencies, primary and secondary schools recognized by state law (Crews, 2003), and higher learning institutions. The number of TEACH Act eligible institutions across the United States created a pool of potential participants that was too large and diverse for the study’s purpose. To make the study manageable, the author determined the need to define a subset of eligible institutions to recruit participants. The author considered that the majority of the articles focused on the TEACH Act’s affects as it applied to higher education institutions and the author decided the study should also follow this same focus. While this significantly reduced the participant pool, the number of higher education institutions was still too large for the author to manage and conduct live interviews. Therefore, to define a manageable study participant pool size, the author decided to focus the study on regionally accredited, non-profit, higher education institutions.

Identification

Participant identification consisted of two phases. The first set of participants were derived from the institutions described in the literature as having a TEACH Act compliant program. The TEACH Act focuses on digital transmission of copyrighted material; therefore it has a unique connection with distance or online education. The second set of potential participants were those with distance learning programs increasing

the potential they considered and implemented the TEACH Act. Potential participants with distance learning programs were identified using the U.S. News and World Report's rankings of online bachelor's and graduate programs for non-profit institutions.

Institutions with programs ranked in more than one category were added to a pool of 50 potential participants. This list was further refined into a primary list of 25 institutions from the literature review and those in the author's local region, within a five-hour drive of the author's home, to support the conduct of face-to-face interviews. This list of 25 potential participants was used to send out invitations to participate in the study. The remaining 25 institutions from the original 50 were to be contacted as necessary to provide at least 12 study participants.

With the participant list developed, the author conducted website research on all 50 institutions to identify an appropriate office, and if possible a specific individual, to invite to participate in the study. In the majority of institutions, copyright knowledge expertise was established in the library system. Most libraries had developed copyright research guides and librarians were identified as the subject matter experts. The use of libraries and librarians as the copyright experts was consistent with the literature review (McDermott, 2012; Crews, 2002). If an individual or office responsible for copyright compliance could not be determined through website research, the author substituted an institution from the secondary list.

Recruitment and Participation Results

Due to geographic and time zone separation limitations, the author decided to use e-mail as the primary communication tool. The initial e-mail invitation to participate in the study was sent to the identified copyright office or individual of 25 institutions. The

invitation described the study and attached the consent letter for the study's first phase for institutional review. The author immediately received several return messages stating individuals or organizations could not be located or there were technical issues with the institution's system. These responses required the author to either send a revised invitation to a new contact in the existing institution or a new institution selected from the secondary institution list. Within two weeks, of the initial invitation, the author received seven responses including two acceptances, four declines, and one institution interested but requesting additional detail. At this time, a second e-mail message was sent to all institutions not responding as a reminder. The reminder message resulted in one additional acceptance, nine declinations, and four institutions stating they were interested in the study, but required more time to get leadership approval.

In response to the declinations, the author inquired with the institution if there were specific reasons for declining to determine if additional detail could help affect the decision. Two declinations were from institutions identified in the literature research as having TEACH Act compliant programs. When queried why they declined, the institutions stated the experts responsible for creating compliancy had either retired or moved to another institution and the individuals currently responsible for TEACH Act oversight did not have the TEACH Act expertise or background. Three other institutions indicated they had considered TEACH Act implementation but decided against it and therefore did not think they could provide useful data. When the author responded stating a portion of the study's first phase gathered data on the reasons why the TEACH Act was not implemented and these institution's decisions would provide useful data, all

three reconsidered and subsequently agreed to participate. The remaining institutions that declined did not respond to any further communication.

In response to the reminder e-mail message, a representative from an interested institution identified a concern regarding the study's anonymity and confidentiality, which they indicated could lead to a potential legal liability issue. The issue centered on the language used in the consent form stating the author would attempt to keep records confidential but could not guarantee it. The representative suggested this might be a primary reason institutions were declining to participate or not responding. The author scheduled a telephone conversation with the institution and received direct feedback on the verbiage and suggestions for changes to the consent letter. The institution's representative stated if complete anonymity could be guaranteed there was a possibility their institution would participate. In addition, the representative stated they belonged to a subgroup within the Association of Research Libraries concerned with copyright and would be willing to send the revised consent form to the other members with a recommendation to participate.

Based on this feedback and consultation with the dissertation committee, a revised consent letter and questionnaire form was submitted for Creighton University Institutional Review Board (IRB) approval. The revision removed collection of any institutional data other than Carnegie Classification data and allowed for institutions with TEACH Act programs to opt into the study's second phase. Upon approval, the revised consent form was sent to all original institutions that had not yet declined as well as eighteen other institutions on the secondary list. The response was limited to one acceptance and two declinations. Of note, the institution that initiated the change did not

respond to the revision or any subsequent messages nor did the Association of Research Libraries when the author sent an inquiry regarding the sub-group.

By the end of the process, the author sent invitations to a total of 46 institutions (Appendix A). A total of nine institutions accepted the invitation to participate in the phase one questionnaire, 15 formally declined, and 22 never responded. Among the nine acceptances, only four had or are implementing the TEACH Act and agreed to consider participation in the interview phase. However, after reviewing the interview invitation, only three institutions consented to be interviewed.

Data Collection Tools

The proposed plan was to use two data collection instruments in a sequential manner supporting the grounded theory methodology, a questionnaire followed by interviews targeted to a subset of questionnaire participants. This structure was designed to allow a larger sample in the first instrument to help identify the TEACH Act issues institutions faced and the institutions with compliant programs to be interviewed. Due to the low participation rates of only nine questionnaires and three interviews, the author added web research of institutional sites as a third collection instrument. The web research allowed the author to collect documentation and identify institutional efforts that could provide additional data supporting the themes and topics identified during the questionnaire and interview phases.

Questionnaire Phase

The questionnaire was designed to collect two distinct sets of data using a combination of closed- and open-ended questions. In the first section of the questionnaire, the closed-end questions were designed to collect data on an institution's

decision to implement the TEACH Act and open-ended questions collected data identifying the reasons why an institution decided not to implement the TEACH Act. Institutions responding in the first section of the survey that they did implement the TEACH Act were provide a second set of closed-ended question to gather data on policy development, terminology definition, education, and technology employed. The survey concluded with open-ended questions designed to gather additional information about the closed-ended items such as identifying particular technical protection methods or tools employed to limit student reproduction of copyrighted materials

The author used the Creighton University license of Qualtrics© survey software to design the questionnaire and collect responses. The electronic questionnaire improved anonymity by allowing the author to provide a generic web address that could be sent to all institutions versus a specific web address for each participant. The generic web address did not require the collection of any specific personal or institutional data. This level of anonymity could not have been achieved using a paper or electronic file questionnaire. These versions would have needed to be mailed or e-mailed to each institution and then remitted through the same process. This would have created a communication trail eliminating complete anonymity. The electronic data collection also eliminates the need for data transcription and, therefore, the potential for related transcription errors. A final benefit of using the Qualtrics© software was its ability to do statistical calculations on the closed-ended data ensuring the proper formulas would be used.

A complete copy of the original questionnaire is located in Appendix B. Based on the feedback during the invitation process, the author revised the questionnaire to

make it completely anonymous with the intent of encouraging more institutions to participate. The revision removed any direct institutional contact information used to identify potential interview subjects but added questions on Carnegie Classification basic and size data with the purpose of determining if size or classification affected implementation decisions. The final revision added the ability for institutions to opt into the interview phase. A copy of the revised questionnaire can be found at Appendix C.

Interview Phase

The interview allowed institutions to provide more detailed experiential and anecdotal data regarding its experience in TEACH Act implementation. The interview also enabled the collection of supporting documentation such as policies and procedures. The interview protocol was comprised of 11 primary questions addressing the methods used to implement the TEACH Act, how policy was developed, what types of technology was used, and if changes in technology since implementation has required changes to TEACH Act program. Seven of the 11 primary questions had secondary questions the author used to guide the institution through each topic such as whether the institution established a formal team to plan implementation or if education is used to inform faculty. A copy of the interview protocol can be found at Appendix D.

Institutional Website Research

Website research was added as a data collection tool at the end of the questionnaire phase as a result of the low participation rate for questionnaire and interview phases. The website research was conducted on the original list of 50 potential participants but expanded as references or links to other institution's TEACH Act information was discovered ending with 60 institutions reviewed. Website research

enabled the author to locate TEACH Act unique documentation such as policies and guidance, training and education content or methods, and identify specific technologies or technical processes the institution employed to implement and maintain compliance.

Data Collection Procedures

Questionnaire

Upon Creighton University IRB approval, the author sent out e-mail invitations to the first set of 25 potential participants. The invitations defined the study's purpose, the reason why the institution was selected, and requested confirmation of participation and all contact information. The author established a reasonable response date of three weeks to allow time for questions and for internal institutional reviews. After two weeks and receiving only six replies, the author sent a reminder e-mail message and received an additional 13 responses. When an institution declined to participate, an invitation was sent to an alternate institution with an extended due date. During this initial invitation effort, three additional e-mail invitations were sent.

The feedback regarding anonymity concerns with the questionnaire occurred as a response to the reminder message. The questionnaire was modified and re-submitted to the Creighton University IRB for review and approval. Once the modification was approved, a revised e-mail message outlining the changes and improvements was sent to all previously invited participants as well as added to five additional e-mail invitations. After a three-week period and follow-up e-mail messages, the author invited 13 new institutions to participate. Through the second round of invitations after the consent form update, the author received only four responses.

Upon receipt of an institutional acceptance, the author sent an e-mail message thanking the institution and providing the institution with the anonymous link to the questionnaire. The author monitored the questionnaire and upon receiving all questionnaire responses, the data was downloaded to a removable media drive to maintain data control and security. Initial analysis of questionnaire data identified areas for detailed analysis such as TEACH Act implementation issues, policy and guidance, technology, and awareness that guided the interview and website collection efforts.

Interview

The last questionnaire item asked TEACH Act compliant institutions to indicate a willingness to participate in the interview phase and, if so inclined, to provide contact information. All four compliant institutions accepted. Each representative was sent a formal e-mail invitation message providing background, a copy of the interview questions, and a new interview specific consent letter. The representatives were asked to review the questions and consent letter with their leadership to determine if the institution was willing to participate and to contact the researcher with the decision. Similar to the questionnaire phase, follow-up e-mail messages were sent as a reminder.

As each institution accepted the interview invitation, the author contacted the institutional representative to arrange a date and time to conduct the interview. At the start of each interview, the author reminded the representative that the interview was being taped but to maintain anonymity any reference to the institution or individuals would be removed. They were also informed the audio file would be transferred to portable storage device that would be secured in a locked container.

Once the interview concluded, the author informed the representative that a transcript would be created and sent to them for review and concurrence. Each audio file was uploaded to the secure portable storage drive and reviewed. Transcription was accomplished by a third-party service and reviewed by the author upon delivery for accuracy and completeness. The transcript file was sent via e-mail to the representative requesting they review and approve the file. All transcript files were uploaded to the portable storage device and secured in the locked container.

Website Research

Website research of 60 institutions was conducted independent of the questionnaire and interview phases. Websites of the institutions comprising the list of institutions invited to participate in the questionnaire were the first 46 sites reviewed. The remaining 14 institutional websites included the final four institutions on the original list of 50 proposed institutions and ten that were either referenced by another institution's website in relation to the TEACH Act or identified through research on professional educational association websites such as the Association of Research Libraries.

The author used a keyword search strategy to locate institutional pages or links related the copyright and the TEACH Act. Specific keywords used were copyright, TEACH Act, copyright or intellectual property policy, and copyright education. Each relevant page or link was reviewed to identify documentation or useful pages in the following main topic areas: policy and guidance, awareness and education, and, technology and tools. The author made observations of each institution's site for future reference during analysis. When feasible, documentation was downloaded to the portable storage device. If web pages or documents could not be downloaded, these pages were

bookmarked and categorized under the topics identified during the questionnaire phase to support analysis.

Website review did provide for the possibility of author bias. As the author reviewed each institutional website and identified documentation or technology used to support copyright, there was the potential for the author to dismiss the documentation or technology without detailed review. The potential was higher for institutions that did not determine to be TEACH Act compliant. To address this potential, the author collected any documentation, technology, tool, or web link directly referencing the TEACH Act or was referenced in a TEACH Act site.

Ethical Considerations

From an ethical lens, this study focused on institutions versus individuals but still required ethical practices to protect an institution's anonymity. The study sought data on how institutions interpreted the TEACH Act and the methods, tools, and policies they created to become compliant. The law's ambiguous language allows for different interpretations that can vary between institutions and, especially, between the users and the copyright owners, which could lead to legal issues. Protection of anonymity and confidentiality were considered critical in the study and necessary to encourage participation and openly sharing of data. This importance was highlighted during the questionnaire phase when anonymity and confidentiality consent form questions were raised. The changes made increase anonymity and improved protection measures.

However, during analysis several institutional unique practices were identified as potential best practices and raised anonymity concerns. If the author determined he wanted to specifically identify an institutional practice, he first contacted the institution

seeking permission. If permission was not granted, the author only made a generalized reference and synopsis of the key best practice concepts. To maintain confidentiality and anonymity, all data was stored on a removable media drive and placed in a locked container when not being analyzed. Supporting IRB original and modified research approval letters and consent forms are provided in Appendix E.

Summary

The TEACH Act was enacted with an intent to provide similar performance and display copyright exemptions for online courses as those allowed for live classrooms. However, digital technology's complexity required Congress to add requirements institutions must meet before being compliant. The ambiguous language increased uncertainty and concern among institutions minimizing implementation. The literature review indicated there were several institutions that took on the challenge and created TEACH Act programs but no central set of guidance or tools identified to help other institutions. Based on the data, the author developed the following research question: What are the processes, policies, and tools of a successful TEACH Act program in accredited non-profit post-secondary educational institutions?

To answer this question, the author decided to use a qualitative grounded theory methodology approach. This method was chosen based on the limited data found in the literature review. The literature identified institutions with successful TEACH Act programs but provided no insight in the approach or tools. The grounded theory method enabled the author to use multiple data collection tools and phases.

Potential participants were identified from two primary sources. The first participant set comprised the successful institutions discovered in the literature. The

remaining participants were determined through conduct of web research on the highest ranked online programs across multiple disciplines. After correlating the data, the author identified a set of 50 institutions. Due to geographic limitations, invitations were sent out via e-mail to an initial 25 and as time passed and responses were low, an additional 21 invitations were sent out. Only nine institutions accepted the invitation, 15 formally declined, and the remainder never responded.

The original data collection plan consisted of two phases, a questionnaire and an interview. The questionnaire focused on gathering data regarding the challenges institution's faced, whether institutions implemented the Act, and basic information on how they addressed the requirements. An electronic anonymous questionnaire was used to gather data. If participants had implemented the TEACH Act, they were requested to identify their willingness to be invited to the interview phase. Only four of nine participants qualified and agreed to be invited for an interview.

The survey's intent was to gather more anecdotal data from institutional copyright experts to expand upon their answers to the questionnaire as well as gather any documents and other data the institution was willing to provide. The author sent a second invitation with a revised consent form due to the potential changes safeguarding anonymity, which was the major ethical concern for this study. Only three of four consented to be interviewed. The author conducted one interview in-person and the other two over the telephone due to geographic limitations. Each interview was recorded and then transcribed by a professional service and reviewed by the interviewee for accuracy. Due to the small sample size, the author added a third data collection of conducting website research of all 50 institutions plus 10 additional identified in the research. The

website review enabled the author to determine other compliant institutions and assess their sites against the best practice themes determined in the first two phases and begin analysis for results and findings.

CHAPTER FOUR: FINDINGS

Introduction

This qualitative study's intent was to assess accredited, non-profit, higher learning institution TEACH Act programs and identify the processes, policies, and tools used to become compliant. Identification of best practices and lessons learned that other institutions could use in their TEACH Act efforts was the goal. During the analysis of questionnaire and interview data, the author defined several central themes focused primarily on the TEACH Act's major tenets. In this chapter, the findings associated with each theme were identified and the results were analyzed to determine if best practices and lessons learned could be defined for each theme. The chapter concludes with an analysis of the consolidated findings that defined a series of general best practice concepts and recommendations for other institutions to consider during TEACH Act implementation efforts.

Findings and Results

During initial data analysis, the author confirmed four general themes first identified in the literature review were supported by the data and are relevant for answering the research question. The first theme, TEACH Act implementation rates and issues, did not specifically address any TEACH Act requirements but was defined to provide context and empirical data on the level of TEACH Act implementation among institutions as well as the reasons why it was not implemented. The author's intent for this topic was to determine if the theories postulated in the literature regarding why TEACH act was not being implemented could be supported. If the data supported the theories, then it provided a level of justification for determining best practices.

The other three general themes defined were institutional copyright foundation, faculty and student TEACH Act awareness, and technology and tools used to meet TEACH Act requirements. These themes aligned with major requirement categories defined in the TEACH Act. Institutional copyright foundation linked the TEACH Act's institutional requirements to create the foundation necessary for the information technology and instructor stakeholders to meet their TEACH Act requirements. Faculty and student awareness built upon the policy foundation and defined how faculty, staff, and students were informed on the use and protection of copyrighted material. Finally, technology and tools used to implement the TEACH Act identified the external technology employed to meet the TEACH Act's technical requirements and any internally developed tools provided by an institution to help implement and manage TEACH Act compliant courseware. The analysis of the last three themes concentrated on identifying best practices and, therefore, the author focused analysis efforts on the institutions identified with TEACH Act programs found during the interview and website research phases. However, the author did assess all 60 institutional websites to determine if there were other potential best practices that could be identified from non-compliant institutions.

TEACH Act Implementation Rates and Issues

Congress' basic intent when it enacted the TEACH Act in 2002 was to provide educational institutions with a copyright exemption accommodating the changes in educational digital technology that would be consistent with the exemptions afforded to live classroom teaching. To address the differences digital technology created affecting the rights of copyright owners, the law included institutional requirements such as portion

limitations on performances and displays not required for the live classroom exemption before the institution could take advantage of the TEACH Act's benefits. The literature indicated these requirements were more of an impediment towards TEACH Act implementation and may be the reason why institutions were not pursuing the TEACH Act. However, research on implementation rates or the reasons why institutions had not implement the TEACH Act was not found during literature review. The author decided to gather data on implementation statistics and issues during the questionnaire phase to provide validity to the study and help guide additional analysis.

Implementation rates. Among the nine institutions that agreed to participate in the questionnaire, five stated they decided to implement the TEACH Act but only four had implemented or were in the process of implementing the TEACH Act. The remaining institution determined the TEACH Act was too difficult to implement providing data on the reasons it did not implement. In the subsequent website research phase, an additional 51 institutional websites were reviewed to determine if any had implemented the TEACH Act. From this review, five institutions were found to have a declared TEACH Act program, one web site stated the institution was in the process of implementation, and three had strong TEACH Act content and appeared to be taking steps to comply with the TEACH Act. Nine institutions determined not to implement the TEACH Act and stated they would focus on using Fair Use for distance education.

Data from the remaining 33 institutional websites was insufficient to determine if they had implemented the TEACH Act. All 33 institutions had web pages addressing copyright compliance that included content on the TEACH Act and Fair Use. While the TEACH Act content varied in format, all the pages generally provided basic TEACH Act

background, outlined requirements by copying TEACH Act content from copyright law, and in some cases linked to TEACH Act compliant institutions' resources as possible sources of guidance or reference. Subsequent review of policy and other available data did not provide significant detail to determine whether an institution had a TEACH Act compliant program. Therefore, the author classified the institutions as not having TEACH Act programs.

From the questionnaire and website research data, 13 of 60 institutions reviewed were identified as having TEACH Act compliant programs for a rate of 22%, Table 1 synthesizes the findings. The study reviewed 60 institutions' websites, which represent a very small portion of accredited, non-profit, higher education institutions in the United States. Without conducting a more thorough study, the author could not definitively state that the result of 22% was an accurate indication of TEACH Act implementation across accredited non-profit higher learning institutions in the United States. But given that the literature indicated a low implementation rate the results would appear to support this assumption.

Table 1

TEACH Act Implementation

Collection Type	Yes	No	Unknown
Questionnaire	4	5	0
Website Review	9	9	33
Total	13	14	33

Implementation issues. The data collected from the questionnaire identified the reasons or issues institutions determined as key factors in their non-implementation decisions. The five institutions that decided not to implement the TEACH Act were asked to indicate the reasons for the decision. The questionnaire provided four general

categories: legal concerns, ambiguity, staff costs, and technology costs as well as a blank space to add other reasons. Institutions were requested to select all the categories that were a factor in its decision not to implement.

Ambiguity received the highest percentage of responses with four out five institutions indicating the TEACH Act's lack of definition was the major contributing factor. The cost of technology was next with two responses out of five. Staff costs and legal concerns received one response each. One institution did provide additional detail in the write-in category stating it decided to rely on Fair Use, which the institution determined was adequate to meet its pedagogical requirements. As mentioned in implementation statistics, the preference for Fair Use over TEACH Act was also found during website review. The results confirm that the limitations and issues identified in the literature affected implementation decisions.

Institutional Copyright Foundation

The literature review indicated three groups of organizations and individuals were responsible for meeting the TEACH Act requirements: institutional policymakers, instructors, and information technology. Institutional policymaker requirements provided the foundation necessary for the instructors and informational technology stakeholders to meet their requirements, and was the first area addressed in the study. During analysis, three major institutional level best practice areas emerged. The first area addressed the type of policy and guidance established by institutions and its impact upon TEACH Act implementation and management. The second area focused on one of the primary issues expressed in the literature review and supported by the questionnaire regarding language ambiguity and whether institutions attempted to define TEACH Act terminology. The

final institutional area addressed whether institutions created centralized copyright expertise.

Policy and guidance. The author's original intent was to identify best practices related to institutional policy documents that provided the high level institutional direction as well as guidance documentation focused on leading instructors and information technology stakeholders through the institution's TEACH Act processes. Each of the 60 institution's websites reviewed contained some level of copyright content that varied in scope and detail from formal written policy to online library research guides. It became apparent there was no consistent application of the policy and guidance terms amongst the institutions. Therefore, the author decided to merge the terms to ensure completeness during data analysis.

During website research, the majority of institutional policy did not contain any content related to the use of copyrighted material but focused on copyright ownership between the institution and faculty. In the instances where institutional policy addressed the TEACH Act, with a few exceptions, the content was either a brief description of the TEACH Act or a synopsis of the law and requirements. This same level of detail was common in the online copyright library research guides of institutions without TEACH Act compliancy programs. This trend raised a question for the author, wondering if mere repetition of the TEACH Act's content in an institutional policy or guideline document meets the regulatory compliance for an institutional TEACH Act copyright policy.

To address this question, the author concentrated analysis on the 13 TEACH Act compliant institutions. The analysis determined that 11 compliant institutions had developed specific policy or guidance on the use of copyrighted material in courseware

that did address the TEACH Act at some level. The remaining two were in the initial stages of developing TEACH Act guidance and processes. Additionally, two interview institutions provided their position on whether repeating TEACH Act content in policy was adequate. The first institution was in the process of implementing the TEACH Act. In the questionnaire, the institution stated its current institutional copyright policy merely repeats the TEACH Act content. During the subsequent interview, the institutional representative stated the policy was not adequate to implement the TEACH Act and the institution is in the process of developing TEACH Act specific guidance.

A second interview participant described its recent policy development effort adding more support that mere TEACH Act content copying was not adequate. The institution went through the development of three versions migrating from a basic repeat of the law to a highly detailed version. After a series of discussions, the institution recognized the policy should not be a repeat of the law but include more guidance on the institution's processes and expectation's of the stakeholders. The fact that compliant institutions developed specific guidance on the use of copyrighted material and was supported by the interview's anecdotal data indicate development of guidance on the use of copyrighted material is a best practice. The practice of using a guide on the use of copyrighted material was not limited to the TEACH Act compliant institutions identified by the author. During web research, the author found six institutions that did not appear to be TEACH Act compliant had created guidance on the use of copyrighted material. The fact that both TEACH Act compliant and non-complaint institutions use this type of guidance further supports this type of guidance development as a copyright best practice.

The level of detail in the use of copyrighted material policy or guidance varied between the institutions. During analysis, the author identified several policies or guides that could be useful in providing other institutions examples of approaches towards use of copyright material policy development. St. Joseph's University's Copyright Policy, Tiffin University's Copyright Policy and Procedures, and North Carolina State University's policy website all provided insight into different approaches in addressing the use of copyrighted material with specific detail regarding the TEACH Act. Other institutions such as Stanford University's Public Online Guidelines, New York University's Policy and Guidelines on Education and Research Uses of Copyrighted Material, and Creighton University's Online Guide for Faculty did not specifically address the TEACH Act but provided guidance that can enable a course to be TEACH Act compliant. Regardless of the focus, these institutions considered the guidance necessary to increasing copyright awareness and establishing standard processes to improve overall use of copyrighted material in courses, specifically online courses.

Despite the varied approaches, the guidance from compliant institutions indicated the TEACH Act and classroom exemptions reviews should not be addressed separately. Institutions recognized these two exemptions were written for education but they cannot address all possible educational uses of copyrighted material, especially in the digital environment. The guidance reviewed from compliant institutions recommended that instructors consider all of the available options to use copyright material, which one interviewed institution called a holistic approach. According to the interviewed institution, the holistic approach should focus on the pedagogical requirements of the courses. The instructor should consider what copyright material is needed, and then

determine how best to provide the copyright materials whether through the use of exemptions such as Fair Use or TEACH Act, using open access and public domain material, or obtaining licenses and permission.

While this compliant institutional guidance provided awareness of the expanded realm of options, on average it did not provide any supporting justification or information to help instructors fully understand the classroom and TEACH Act exemption's nuances. These two exemptions addressed only the performance and display of copyrighted material, which have very specific definitions in copyright law. If an instructor wants to post articles or other textual material on the course site, the TEACH Act cannot be used to justify the action (Smith, 2014). Posting material would not meet the definition of display found in U.S.C. 17 § 101 because the instructor is not showing a copy of the article but providing the students with the article.

Because instructors are not experts in the nuances of copyright, institutional guidance needs to provide information helping instructors recognize what is considered performance and display, as well as other copyright areas of concern to avoid confusion. North Carolina State University's and St. Joseph's University's guidance provided examples addressing how to improve the awareness of their faculty and staff as they design courses and consider the use of copyrighted material. Increased awareness of definitions and application of copyright exemptions indicate these institutions are making every effort to show good faith. Given the emphasis placed by TEACH Act compliant institutions, as well as non-compliant institutions, on the development of an institutional level use of copyrighted material policy guidance, it would be recommended as a best practice for other institutions.

Terminology definition. The major TEACH Act concern identified in literature was the number of ambiguous terms used in the requirements. The concerns centered on the litigation potential if a copyright owner did not agree with how an institution interpreted the TEACH Act's language. The primary areas of conflict were the requirements for use of reasonable and limited portions of dramatic works, the length of a class session, and what is a technically feasible and reasonable attempt to limit reproduction and dissemination. During the questionnaire phase, only one institution stated it had specifically defined the TEACH Act's terminology, which it included in its guidance on the TEACH Act.

While other compliant institutions did not make a specific attempt to address the ambiguity, several addressed the issues of what is considered a *reasonable and limited portion*. These institutions, as well as many non-compliant institutions, referenced in guidance the brevity limits outlined in the U.S. Copyright Office's Circular 21: Reproduction of Copyrighted Works by Educators and Librarians or the Fair Use guidelines established through the Conference on Fair Use (CONFU) of 1998. The use of these specific guideline limits addressed the ambiguity of what is a *reasonable and limited portion* for these institutions. However, there were institutions that question if these hard limits impacted flexibility in using copyrighted material in distance education as compared to the live classroom that does not have the *reasonable and limited portion* requirement. For example, the 1998 CONFU report established a limit of 10% or 3 minutes for motion media and 10% or no more than 30 seconds for music. If these limits are applicable to only the distance education, the question then becomes whether an institution can provide the same level of educational quality.

During the interview phase, one institution stated it specifically did not define *reasonable and limited portion* because it believed each use of copyrighted material is unique and specific limits would detract from education. It further stated there has not been any legal precedence defining limits and past legal reviews had conflicting views of what is a reasonable limit. The institution decided to focus on meeting the pedagogical needs of each course based on the instructor's assessment of each copyrighted item. This approach allowed the instructor to determine what portion is necessary to support the course or lesson objectives. The institution stated it also takes a holistic view of educational copyright seeking to help the instructor to answer the question of what they can do in their class and not just what the TEACH Act or Fair Use allowed. The institutions pedagogical and holistic type provided flexibility to instructors during the course design to maximize educational benefits. However, it did not provide a simple black and white answer requiring instructors to seek help in assessing the rules and laws and the need for central expertise.

The policy, guidance, and website analysis did not locate any consistent evidence in institutions defining other ambiguous terms. The author could only identify one instance where an institution defined *class session* and no instances of *technically feasible and reasonable*. However, all institutions required password-protected access to course materials as the method to limit access to students. While the data did not provide definitions for ambiguous terminology, it indicated that institutions did consider defining the terms to help guide faculty and staff. The author recommends as a best practice that institutions do consider defining ambiguous terminology such as whether it will use existing portion limits or use the pedagogical holistic approach. Whether or not the

institution does define the terminology, the lessons learned in the attempt can be used to improve processes and guidance to faculty and staff.

Establishing centralized copyright and distance education expertise. The literature review provided insight into the changing nature of copyright law and the impact of legal cases and opinions. It also addressed the fact that ambiguous language further added to the confusion instructors face in dealing with copyright. Instructors work with copyrighted material on a frequent basis and are expected to ensure they use copyrighted material properly. However, instructors are not copyright experts and cannot maintain awareness on all aspects of copyright law as it pertains to their unique educational needs. Establishing guidance on the use of copyrighted material can provide initial awareness for instructors but the guidance cannot address every copyright situation. In order to ensure instructors are properly using copyrighted material in accordance with the latest copyright law, institutions should establish a centralized copyright individual or organizational expertise.

During website research, the author noted most institutions had created copyright research guides and assigned a research librarian to oversee the content and would be considered the institution's copyright expert. The establishment of copyright expertise within the library was consistent with the recommendations by Crews (2002) and McDermott (2012), who stated librarians frequently address copyright issues. Generally, the research librarian's role as copyright expert is one of many areas the librarian manages. The librarians' background and experience are primarily in library science and not legal. The part-time nature and limited legal experience could limit the level of expertise that can be maintained. The legal aspects can be addressed if the librarian has

access to legal support such as the institution's general counsel, if the general counsel has the expertise in place. During web research, most general counsel pages focused on intellectual property and copyright issues related to institution developed material and the use of copyright expertise was found at the library. This division of labor was supported in an interview where copyright expert, who was research librarian and in the process of implementing the TEACH Act, stated his general counsel expected him to be the institution's expert and asked that he remove any recommendation to seek advice of the general counsel on copyright issues because they do not have the expertise.

In contrast to the part-time nature of most institutional copyright expertise, two TEACH Act compliant institutions, identified in the literature, established offices or centers providing copyright guidance and education. In staffing these offices, the institutions hired librarians with legal degrees that provided the mixture of experience to address the variety of copyright issues facing the institutions. The institutions also provided the resources required for developing policy, guidance, processes, and education as well as opportunities for the copyright experts to maintain their expertise. It is this last item, providing resources, that is lesson learned. Regardless of whether the copyright expertise part-time or full-time, the institution should provide the resources necessary for the experts to maintain their copyright knowledge and develop the guidance, education, and tools to improve the faculty and staff's ability to properly use copyrighted material.

The analysis identified a second potential area of expertise that could support stronger copyright programs. The rapid distance education technology change cycle added complexity to the issues facing instructors. Similar to copyright, awareness of

distance education capabilities is expected of instructors but is also not an area that they can maintain complete awareness. In addressing the need for distance education expertise, institutions such as North Carolina State University, Arizona State University, and Creighton University created centers of excellence staffed with personnel experienced in all aspects of distance education, including copyright. The distance education expertise can complement and supplement the copyright expertise, especially since they work closely with instructors in designing distance education courses and the decisions of which material should be used. During the interview phase, a copyright expert stated that he rarely deals with common copyright questions from instructors because the institution's distance education center addresses them immediately in the design phase. The expert explained that this cooperative copyright effect allowed instructors to get their common copyright questions answered without having to wait for the copyright office and allowed the copyright office to address the unique copyright issues needing the office's specialized knowledge and concentrate on institutional level education and policy. As institutions grow in their use of digital technology and distance education, establishing centralized expertise can improve the quality and consistency of distance education and potentially improve the proper use of copyrighted material.

Faculty and Student Awareness

The TEACH Act required compliant institutions provide material on TEACH Act policy to faculty, staff, and students describing copyright law and encouraging compliance (17 U.S.C. § 110(2)(D)(i), 2011). The four TEACH Act compliant institution identified in the questionnaire's first section were queried in the questionnaire's second section on the methods employed to meet this requirement. The

questionnaire provided four pre-defined responses and a write-in option for the institution to select. The pre-defined responses were: post policy on website; requires faculty and staff to read policy and sign affidavit; provides educational courses or seminars; and uses central office, committee, or individual to review compliance. The results are shown in Table 2.

Posting policy and providing education were the primary awareness methods used by the compliant institutions. The use of education and training as a method supports the literature review indicating copyright education and training was instrumental in establishing consistent compliance. All four institutions indicated that they used internally developed education. While no institution required its faculty to sign an affidavit, one write-in responses stated the faculty contract contained language stating instructors are required to meet Title 17 U.S.C. requirements. Another institution during the interview phase made this same statement. The other write-in answer indicated the expert provided individual consultations and walk-through reviews upon request.

Table 2.

Faculty and Staff Copyright Awareness Methods

Method	Responses
Post policy on website	4
Requires faculty and staff to read policy and sign affidavit	0
Provides educational courses or seminars	3
Uses a central copyright expertise to review compliance	1
Other (Write In)	2

During the interview, the three institutions were asked to discuss the type of education provided to faculty, staff, and students. Only two institutions actually had education in place as the third is in the process of implementing the TEACH Act and

would be creating education. Neither institution required faculty, staff, and students to take the courses but provided them as requested. The content also varied as one institution conducted a webinar using the expertise of the research librarian and a lawyer from the general counsel to cover a variety of copyright related topics including Fair Use and TEACH Act. The other institution had established a copyright office with a team of two with a responsibility to educate the stakeholders and applied a holistic copyright approach to education. The expert indicated they provide presentations on request to departments, schools, staff offices, and students in topics that range from general copyright where all aspects of copyright are addressed to specific TEACH Act lessons. Website research indicated copyright education was offered in several TEACH Act and non-compliant institutions such as Arizona State Online University's online TEACH Act presentation, Eastern Kentucky University's three-part webinar series on Copyright Essentials for Faculty, and the University of Michigan's series of copyright workshops. Educational institutions recognized that posting copyright policy and guidance was not sufficient in ensuring faculty, staff, and students are aware of their copyright responsibilities. Development of education has become the preferred method and should be considered in implementing the TEACH Act.

Technology and Tools

The final theme addressed the use of technology and tools to meet the TEACH Act requirements of limiting access and restricting reproduction and dissemination. Analysis of data from all collection sources indicated technology and tools were divided into externally purchased technology focused on meeting the TEACH Act requirements and internally developed tools used to support the institution's policy and processes.

External technology. The technological methods used to meet the two TEACH Act requirements of limiting student access and restricting reproduction and dissemination were assessed in the questionnaire and followed-up on during the interviews. The questionnaire asked institutions to indicate what technology or methods were employed to meet each of the requirements. For each requirement, the author provided the institution a list of potential options based on findings in the literature and a write-in option for technology or methods not listed. The questionnaire also asked the institutions to identify any unique software and hardware purchased from vendors. A complete list of options can be located in Appendix C, Revised Questionnaire. The results for Limit Student Access and Restrict Reproduction and Dissemination are shown Tables 3 and 4, respectively.

Table 3

Limit Access to Student Methods

Technology or Method	Responses
Password Required	2
Internal Processes	1
Specialized Software	3

Table 4

Restrict Reproduction and Dissemination Methods

Technology or Method	Responses
Time Limited Access	4
Streaming Audio or Video	4
Internet Protocol Checking	2

In the questionnaire, the institutions identified several software technologies used to limit access and restrict reproduction and dissemination. The primary type of software employed was a learning management system (LMS). An LMS enables an institution to

manage digital courses and associated course material. Access to the LMS is controlled through individual passwords, which then can also be used to control access to unique courses. Courses are created and loaded individually on the system and LMS enables the instructor to apply internal access controls or time limits on course material making each course unique and adaptable to the instructor's requirements while still supporting the TEACH Act technical requirements. One institution mentioned it used an additional access and authentication software beyond the standard password protection to limit access.

Streaming video and audio software was another category highly recommended in the questionnaire and more specifically in the interviews. Streaming technology allows students to view videos or listen to audio but the system will not allow the student the ability to save a copy or share it with others. In addition to standard streaming software, the institutions identified three different types of streaming software services used to access open source materials. Using these types of services can provide an institution access to numerous video and audio file repositories where the licensing agreements have already been accomplished eliminating the need for institutions to seek individual licenses.

The final software category mentioned was a digital media management and content distribution cloud system used to store and manage the institution's digital media. The technological TEACH Act requirements require institutions to research and invest in software, hardware, and services to become compliant. There are key types of technology such as a LMS or streaming services an institution should consider and several different types of each technology available to meet the institutions unique needs.

During TEACH Act implementation, it is recommended institution investigate different technologies as they address each requirement.

Internally developed tools. Due to the TEACH Act's complexity and ambiguity, institutions recognized the need for internally developed tools to guide faculty and staff through the institution's TEACH Act processes ensuring the proper use of copyrighted material. All the leading TEACH Act programs developed internal tools such as North Carolina State University's TEACH Act Toolkit, Ball State University's TEACH Act Checklist, and University of Texas' Copyright Crash Course. These tools address the process developed by the institution in becoming TEACH Act compliant and help guide faculty and staff through the process. As leading institutions in TEACH Act compliance, the three institutions mentioned above recognized their efforts could provide insight and guide other institutions. They freely made their tools available to any institution interested and offered to provide advice and counsel. Links to the North Carolina State University and the University of Texas tools are used frequently in other institution's copyright research guides as recommended tools instructors can use for sound TEACH Act design. Other institutions decided to develop tools suited to their own unique processes and situation. Brigham Young University created a copyright decision flowchart that guides faculty in determining whether copyrighted material would meet an exemption or should gain permission to use. In addition to its TEACH Act Checklist, Ball State University also developed an electronic copyright compliance form for instructors to determine if their intended use of a video meets the reasonable and limited requirement. Another useful tool is a graphic decision tree used by Duke University and North Carolina State University to determine the proper situations that allow instructors

and institutions to digitize analog content. All these tools are available to institutions interested and can be adopted or adapted to reduce the amount of research and design for an institution. The use of internally designed tools is useful in guiding faculty, staff, and students in implementing and maintaining a TEACH Act compliant program.

Analysis and Synthesis of Findings

This study's purpose was to determine the strategies, processes, tools used by successful TEACH Act institutions with an intent to identify best practices. Despite the small sample size in the questionnaire and interview phases, initial analysis identified key themes in policy and guidance, terminology definition, centralized expertise, faculty awareness, external technology, and internal tools used to conduct further analysis. The analysis into each theme discovered several commonalities among compliant and non-compliant institutions. Each of these commonalities were reviewed and the following were identified as best practices for implementing the TEACH Act.

- **Develop Use of Copyrighted Material Guidance:** Institutions are required by the TEACH Act to establish copyright policy. On average, institutional policy typically addresses the requirement to be compliant with copyright law. A guide on the use of copyrighted material provides faculty, staff, and students with details to properly determine the best method to ensure the use of copyrighted material does not infringe on the owner's rights. It is recommended this guide not be TEACH Act specific but address all options available such as Fair Use exemption, open source, and licensing.
- **Consider Defining Ambiguous Terminology:** Terminology definition is not a common practice amongst TEACH Act compliant institutions. However, a

few institutions have defined terms to reduce confusion among faculty and staff mainly related to what is a *class session* and *reasonable and limited portions*. A common practice regarding portion limits is to use pre-defined guidelines from CONFU or U.S. Copyright Office's Circular 21:

Reproduction of Copyrighted Works by Educators and Librarians. However, other institutions have argued these limits inhibit meeting pedagogical requirements. If an institution does consider defining ambiguous terminology, it is recommended they consider whether the definitions could impact the quality of distance education.

- **Establish and Resource Centralized Copyright Expertise:** The ambiguous nature of copyright law and the continual changes required dedicated resources to maintain awareness and compliance. This is a subject area most faculty do not have the time or experience to maintain expertise. Centralized copyright expertise provides an institution with an individual or organization dedicated to maintaining copyright knowledge and providing appropriate knowledge to faculty, staff, and students. Whether the expertise is part-time or full-time, the changing nature of copyright requires dedicated resources to ensure the expertise is current and can influence policy, processes, and tools.
- **Consider Establishing Centralized Distance Education Expertise:** Similar to copyright, distance education capabilities and associated laws or policy also are in a constant state of change. Centralized distance education expertise ensures consistent quality of courses and can support the proper use of copyrighted material guidance.

- **Create Institutional Copyright Education:** Copyright education ensures that faculty, staff, and students are provided with a consistent interpretation of the institution's copyright policy and guidance. Institutions should consider a variety of different education opportunities from a copyright introduction in student and faculty orientation to formal courses in the proper use of copyrighted material and specific subjects such as the TEACH Act.
- **Purchase External Technology:** The TEACH Act requires technical solutions to limit access and resist future reproduction and dissemination. Software developers have created numerous capabilities and services such as streaming video and authentication designed to meet TEACH Act requirements. Additionally, institutions should also investigate features such as disabling printing and digital watermarks that are available in the common documentation and media format software, which can add additional protection of copyrighted material.
- **Implement Internal Tools:** Numerous internally developed tools have been created by TEACH Act institutions to help guide faculty, staff, and students in meeting compliance requirements. The tools such as an easy to follow checklists or graphic flowcharts on when to digitize reduce the stress and simplify the process. The compliant institutions have made their developed tools available for other institutions. In implementing the TEACH Act, institutions should consider adopting these tools or developing their own to improve consistent compliance.

The TEACH Act was enacted to provide educational institutions with the opportunity to use copyrighted material in distance education courses in a manner similar to the live classroom. The TEACH Act's added requirements and ambiguous language did not provide enough detail for institutions to understand how to develop a compliant program leading many to decide not to implement. The best practices identified in this study were a result of an analysis of policies, processes, and tools of current TEACH Act compliant institutions. These best practices represent key concepts and areas where institutions can focus their limited resources as they pursue implementing a TEACH Act program.

Summary

Data was collected using three different tools: a questionnaire, interviews, and website research. At the end of the questionnaire and interview phases, the data was analyzed to identify potential best practices themes. The following four general themes were identified, TEACH Act statistics and implementation issues, institutional copyright foundation, faculty and student TEACH Act awareness, and technology and tools used to meet TEACH Act requirements. The last three themes were used to focus the website research to identify potential useful data from institutions that had not directly participated in the questionnaire and interviews.

The first theme focused on determining the rate of TEACH Act implementation as well as the issues and concerns institutions considered when deciding not to implement the TEACH Act. The small sample size of five institutions participating in the questionnaire phase that decided not to pursue the TEACH Act limited the data fidelity. Despite the limits, the five institution's responses corresponded closely with the proposed

problems identified in the literature review. This data formed the foundation for the three best practice themes of institutional copyright foundation, faculty and student TEACH Act awareness, and technology and tools used to meet TEACH Act requirements and was used to focus the interview and website research collection phases.

In the analysis of the data associated with the institutional copyright foundation theme, three subtopics were identified. The first subtopic, policy and guidance, is a direct TEACH Act requirement. Data indicated institutional level policy primarily focused on just repeating the TEACH Act's content, which the author questioned whether this was sufficient to meet the TEACH Act requirement. As the author conducted website research review of compliant TEACH Act institutions, he identified that compliant institutions developed guidance on the specific use of copyrighted material that addressed not only TEACH Act application but other possible options such as Fair Use or open source. The guidance provided detailed institutional practices and processes for the faculty and staff to determine the proper use of copyrighted material. The author also discovered similar use of copyrighted material guidance employed by non-TEACH Act compliant institutions and increasing the merit of this guidance as a best practice.

The second institutional copyright foundation subtopic reviewed whether institutions attempted to address the ambiguous language in the TEACH Act define specific terms. During website research, only one TEACH Act compliant institution had defined terms in its guidance. Regarding the *reasonable and limited portion* term, there were numerous institutions, TEACH Act compliant and not, that stated they used portion limits defined in third-party guidelines. One interviewed institution provided an opposing position on pre-defined portion limits implying it impeded an instructor's

ability to meet pedagogical requirements of a course. The institution stated that the instructor was the best judge to determine what is the reasonable portion necessary and stated this approach did meet the intent of the TEACH Act requirement. The final institutional copyright foundation subtopic addressed establishment of centralized copyright expertise. The analysis determined some level of copyright expertise existed at all the institutions reviewed, but in TEACH Act compliant institutions, there was a higher frequency of establishing specific copyright offices or centers rather than the standard practice of using research librarians on a part-time basis. The analysis also identified a second area for centralized expertise in distance education development. The anecdotal interview data indicated this type of centralized expertise could complement copyright expertise and address use of copyrighted material questions early in the design process.

The second best practice theme focused on faculty awareness. Data indicated compliant programs determined establishing policy was not adequate in improving faculty awareness and use. Institutions internally developed education courses and seminars guiding instructors through the institutions' copyright review and decision processes. Interviewed experts stated education was an important function in ensuring the institution works in good faith to meet the intent of copyright law.

The final best practice theme sought to address the technical requirements to limit access and restrict reproduction and dissemination and the use of institutionally developed tools. Password protection was identified as the preferred method to limit student access and used learning management systems as the principal technical involved. The data also identified several categories of software or software systems employed by TEACH Act compliant institutions in addressing reproduction and dissemination restriction such as

streaming video software, open source video and audio repositories, and digital media content management systems. One interviewed expert also mentioned using disabling print functions and read only version techniques to meet the technical requirements available in most common documentation and media format software that complement the learning management system. The analysis identified that the leading TEACH Act complaint programs developed additional tools such as checklist and video request forms that support the institution's guidance and guide faculty and staff in designing TEACH Act compliant courses. The institutions recognized the usefulness of the tools and have made them available to any institution seeking to implement the TEACH Act. The author recommended institutions consider using these tools already available or develop their own to help improve internal process consistency.

The final analysis identified seven best practices for institutions to consider as they look to implement the TEACH Act. The best practices were: Develop Use of Copyrighted Material Guidance; Consider Defining Ambiguous Terminology; Establish and Resource Centralized Copyright Expertise; Consider Establishing Centralized Distance Education Expertise; Create Institutional Copyright Education; Purchase External Technology; and Implement Internal Tools. These best practices provide key areas and topics that can be used by institutions to focus their limited resources as they pursue implementing a TEACH Act program.

FIVE: CONCLUSIONS AND RECOMMENDATIONS

Introduction

The findings and results discovered during analysis provided insight into the TEACH Act's complex nature as viewed by accredited, non-profit, higher education institutions. The data also identified the variety of policies developed, processes defined, and technologies employed by successful institutions in implementing the TEACH Act. The study confirmed, what author's predicted in the literature, that the TEACH Act had a low implementation rate among eligible institutions as well as the primary reasons why institutions decided not to implement the TEACH Act. The confirmation of reasons for non-implementation enabled the author to focus data collection on the identification of issues. The subsequent analysis identified seven general best practice topics and supporting data institutions could consider when implementing the TEACH Act. The study's results increased the practical knowledge on the TEACH Act regarding processes, tools, technology, and guidance supporting implementation. While the study did not result in a best practice guide as originally intended results do provide a foundation for further investigation and the basis for developing a set of detailed best practices. In this chapter, the author will define a proposed solution to conduct additional research to developed specific TEACH Act best practice guides, identify stakeholders, and address the role of leadership in initiating the solution. A strategy and its influencing factors will be provided as an outline for the stakeholders to begin implementing the solution and conclude with the solution's implications to education and copyright harmonization.

Purpose of the Study

The purpose of this qualitative study was to identify the strategies, policies, processes, and tools used by accredited non-profit post-secondary education institutions with an established TEACH Act compliant program.

Aim of the Study

The aim of this study was to develop a set of best practices from the successful examples for other institutions to consider in TEACH Act implementation strategies.

Proposed Solution

The results developed during analysis were not sufficient in terms of fidelity and specificity for the author to meet the study's aim. Limited participation in the questionnaire and interview phases did not provide enough data to define specific best practices, only generalized concepts as a foundation for further investigation of best practices. Participation was affected by institutional concerns that association with results could open the institution to litigation. Risk adverse leadership that did not recognize the benefits of participating in the study also impacted the participation rate. These concerns were beyond the author's ability to control despite efforts to improve response rates, but a professional organization may be able to better address these concerns expressed by institutions.

While the data did not provide specific solutions, the fact that several general best practice categories were identified indicates the potential for defining specific best practices. Development of specific best practices will require further research conducted by an entity with the ability to overcome the participation issues the author faced. The author proposes a professional organization with a vested interest in addressing copyright

and the TEACH Act concerns sponsor additional research to develop guides on TEACH Act implementation best practices. The support of a recognized, professional organization and its membership such as the Association of Research Libraries (ARL) Intellectual Property ListServ should aid a future researcher in overcoming the participation concerns identified in this study. The professional organization can also provide access to additional resources or expertise above that available to an individual researcher.

Support for the Proposed Solution

The author recognized the limited data gathered was not sufficient or detailed enough to enable the determination of suitable best practices or create a guide, as was his original intent. Among the nine institutions consenting to the questionnaire, four had implemented or were in the process of implementing the TEACH Act and three consented to be interviewed. The small sample size only provided several general consistencies between the successful programs such as creation of additional guidance on topics such as use of copyrighted material beyond standard institutional copyright policy. Due to the different approaches towards guidance and formats, there were too many variables to attempt to correlate without access to the developers. The author was able to ask specific questions of two institutions about their development process, assumptions made regarding the TEACH Act, and how decisions were made. The third institution had just started developing institutional TEACH Act policy, but planned to develop supporting guidance. Unfortunately, for the one interviewed institution identified in the literature review as a TEACH Act implementation example, the expert who developed

the guidance had taken a position with another institution and the current expert could not provide details on how the guidance was created.

During the data collection efforts, the author was made aware of a potential source of data and participants that could have improved the study's design. Through conversations with an institution in the initial questionnaire invitation process and in an interview with a second institution, the author was made aware of the ARL ListServ group of institutions focused on addressing intellectual property matters. The institutional expert, who first provided knowledge of the ListServ in the questionnaire phase, had emphasized their support and belief the study had merit and offered to provide the questionnaire invitation to the ARL ListServ group (personal communication, September 29, 2016). However, the institution decided not to participate and the author lost this opportunity to increase participation. The author attempted to contact ARL directly seeking its support, but never received a response from the organization. If the author had gained the support of ListServ members there would have been a better potential for higher participation. The increased participation would have provided more data to potentially identify best practices or the membership could have provided the author guidance on focusing the study to address specific area.

A second area supporting the proposed solution was identified during the literature review. The author identified a precedent for a professional society or organization to lead development of copyright related best practice guides. The Center for Media and Social Impact, formerly the Center for Social Media, led teams with the support of other professional societies such as ARL in developing a series of Fair Use best practice guides. The Fair Use best practice guides addressed 14 educational subject

areas such as online video; language for course syllabi; images for teaching, research, and study; and, teaching for film and media educators. Several of these same topics could also be applied to the TEACH Act and a professional organization interested in working on TEACH Act guides can use these Fair Use guides and the development process as a template. These examples of cooperation provided evidence that the support of a professional organization with access to stakeholders and a common goal should have a higher potential for success versus the author's study design.

The final proposed solution support area addressed the low TEACH Act implementation rate, estimated at 22% during the study. The low implementation rate begs the questions whether institutions are interested in the creation of TEACH Act best practice guides. The questionnaire addressed this question by asking the five institutions that decided not to implement the TEACH Act whether a best practice guide be useful. Three respondents identified a TEACH Act guide would be extremely useful; one indicated it would be moderately useful; and, the last respondent stated it would be slightly useful. Additionally, as the author engaged with institutions declining participation to gather data on why they declined, he offered to provide them with the study's results. Only five institutions responded and all expressed a high interest in getting the study results. Finally, all three interviewed institutions stated there was a need for the study and identification of best practices, especially the one institution in the midst of its TEACH Act implementation effort. The high level of interest in a TEACH Act best practice guide from multiple institutions, when added to the fact similar Fair Use efforts have succeeded, provide a professional organization with the justification to

support the time and resources required for to lead future studies and guide development projects.

Factors and Stakeholders Related to the Proposed Solution

In addition to the ARL and Center for Media and Social Impact organizations addressed earlier, the literature review identified other professional organizations that have worked on educational copyright guidance. In 2005, a consortium consisting of ARL, the Association of American University Presses, the Association of American Universities, and the Association of American Publishers issued a basic guide on campus copyright policy. This effort included representatives from the users and copyright owners and created a guide both sides of the copyright debate supported. The success of this type of cooperative model should be considered by a professional organization when leading the development of TEACH Act best practice guides. The inclusion of copyright owners was a part of the Copyright Office's TEACH Act study to develop recommend changes to U.S.C. 17 § 110(2) to address the changes in distance education. The unilateral approach was challenged immediately and required a second round of data collection and negotiation with the copyright owners that lead to the additional institutional implementation requirements. Inclusion of copyright owners at the beginning of TEACH Act best practice guide development efforts should increase success and acceptance.

In previous Fair Use and general copyright best practice development efforts, the professional organizations provided the sponsorship and necessary resources. However, the key stakeholders were the members of each organization. The professional organization facilitated the development with the members providing access to data,

concepts, and examples. The members also provided the environment to test solutions and ultimately approved the final product. Cooperation between members and organization was a key element towards success requiring the establishment of a common vision and the structure to bring the various ideas and solutions together in a cohesive manner. In developing accepted TEACH Act best practice guides, cooperation is a critical factor a professional organization needs to address among its members, but also between the users and the copyright owners.

Policies influenced/influencing the proposed solution. Each educational institution has its own established set of policies and procedures, which can influence how an institution may approach working on a cooperative effort. In a cooperative effort the differences between institutions can add complexity towards achieving an acceptable solution. As with individual institutions, professional organizations also have their own established policies guiding its internal structure and membership in meeting the mission and goals. Member institutions are asked to work under the organization's guidance and procedures when working together on projects that can impact the overall organization and its membership. The use of the organization's established and accepted policy and procedures reduces the laborious effort required to create a common goal, group charter, and procedures for an ad hoc team and influences the approach towards developing solutions.

Depending upon the outcome of best practice guide development, institutions may need to revise internal policy and guidance to enact recommended changes in the guide. Each institution will have to assess the risks and potential benefits associated with revising policy and decide whether to pursue an update. The risks will vary between

institutions but all institutions will likely consider the risk of legal action, which was identified as a factor in non-implementation decisions. If the guidance is developed with the cooperation of copyright owners, the risks of legal action should be minimized and increase the benefits. Additionally, best practice guides are not statutory or regulatory and, therefore, no institution is required to implement the best practices. The guides would only provide suggested methods or tools considered to be TEACH Act compliant for institutions to consider when working to update policy to meet TEACH Act requirements.

Potential barriers and obstacles to proposed solution. There are two potential barriers in creating a set of TEACH Act best practice guides. The first is opposition from copyright owners that could interpret any recommendation as an infringement on their exclusive rights. This opposition can be addressed through inclusion of copyright owners in the development of best practice guides. Similar to institutional policy, each type of owner such as the movie or music industries may have conflicting interpretations as to what is considered an infringement or what tool or technique would be compliant. This will increase the difficulty in developing a best practice guide that attempts to address at all TEACH Act aspects. It would be recommended that TEACH Act best practice guide development take a lesson from the Fair Use efforts that focused on a single and unique type of copyrighted material. This allows the work to focus on one set of users and owners to address their unique concerns.

The second barrier is if copyright law is revised resulting changes to the TEACH Act and its requirements. Changes to laws require time to study, gather evidence from the affected parties, and then hold hearings in Congress before a final decision is made.

The time required to enact changes in copyright law would allow organizations working on best practice guides the opportunity to assess the proposed changes and adjust the guidance as necessary.

Financial/budget issues related to proposed solution. From the financial perspective, the sponsorship of a professional organization and facilitation of the best practice guide development should minimize financial issues. The organization should have its own established budget provided through member fees and other financial sources such as grants that can be allocated to the development effort. The organization should also have the processes and tools to manage track the allocated budget and adjusted accordingly. At the individual institutional level, each institution will have to address financial and budget issues as they seek to implement best practices. If a best practice requires an institution to make a major investment, then the institution will have to assess the impacts and benefits before making a decision. But the institution is not mandated to adopt any best practices; thereby reducing financial obligations if the institution determines it is not financially feasible.

Legal issues related to proposed solution. This study and the proposed solution sought to define best practices to implement the TEACH Act. There is a potential copyright owners could consider the recommended practices as infringements of their rights and pursue legal action. It is recommended that best practice guide development efforts include the affected copyright owners, or their representatives. If all parties agree the guidance is a fair and reasonable attempt to balance between owner's rights and user needs, then legal actions should be reduced.

Other stakeholders related to proposed solution. The TEACH Act was enacted as a response to digital technology's impact upon distance education. Digital technology also plays a key role in meeting the TEACH Act's requirements and was identified as a general best practice in the study. Representation on the development team from providers and developers of the most common software and hardware systems provide two benefits. First, the development team can be informed on the current capabilities as they apply to the TEACH Act's requirements and get an awareness of future changes. This information can help provide institutions with a concise synopsis of different technologies decreasing individual research and increasing potential compliant options. Second, the technology representatives can be made aware of issues and concerns with the current capabilities. This data can inform future development to include features or new technology to overcome the issues.

There is a potential issue the professional organization faces when deciding which companies to invite to participate. There are numerous companies providing similar capabilities and competing for the business of individual educational institutions. If one company is invited but not another with a similar capability, there could be issues within the membership of bias and pressure to purchase from the one vendor. To overcome bias, it would be recommended members be asked which companies to invite to present capabilities or have an open invitation sent. The leadership will have to work closely to ensure that bias is reduced but recognize not every digital technology can be represented.

Change theory. The proposed solution does not seek to have a professional organization make changes to its organizational policy or structure that is the primary focus of change theory. The professional organization is a group of member institutions

with similar interests and issues working together to share experiences and resources.

Studies and research such as TEACH Act best practice guides are not focused on change for the professional organization but to provide members with data to consider internal organizational changes. This type of organization structure can be defined as an informal organization or loosely coupled system (Burke, 2014; Cawsey, Deszca, & Ingols, 2012).

These types of organizations, typically, do not have the standard formal chain of command organizational structure, but they are faced with a variation of the typical issues and resistance found in formal organization structures (Burke, 2014). Member organization resistance replaces individual resistance and requires the leader to adapt methods to address the varied resistance to new ideas and change. An organization member can determine it does not want to continue participation in the proposed solution effort or implement the solution without the decision impacting the loosely coupled system. It is recommended the proposed solution leader work to overcome member resistance to increase the solution's strength.

After best practice determination and guide publication, individual institutions will have to assess the recommendations and the impacts upon their structure. Organizational change may be required to implement a best practice. Depending upon the best practice, an institution may face individual and group resistance, requiring use of change theory methods. Resistance can be reduced if the institution participated in the effort to define best practices. As data is developed, the institution can begin to socialize potential solutions to gauge the type of resistance and work on methods to address each group or individual. Additionally, the institution could volunteer to serve as a test case to assess the viability of a best practice. This would allow the affected individuals and

groups to experience the best practice and provide feedback to the administration and potentially reducing resistance. While individual institutional implementation is a component of the proposed solution, it is a logical outcome and institutions should prepare to address organizational change.

Implementation of the Proposed Solution

The study's intent was the development of a TEACH Act best practice guide. As the study progressed, the data did not support developing a guide but it did identify general best practice areas meriting further research. To implement the proposed solution, the author will have increase the awareness of a professional organization about the general results and benefits conducting further research would have for it members. Gaining the professional organization's support will first require building support for the solution among key member institutions.

Building Support for the Proposed Solution

Through the data collection phases, the author identified a dozen institutions with an interest in the outcome of this study. These institutions represent not only those deciding to participate in the study but several institutions, despite declining participation, expressing a desire to gain access to the study's results. Once the dissertation is approved, the author proposes sending out to all interested institutions a copy of the results. Included with the results would be a request they consider distributing the results to their professional societies, specifically mentioning the ARL ListServ and the Center for Media and Social Impact as potential starting points. At the same time, the author would attempt to communicate directly with the professional organizations identified in the literature review. This direct communication would focus

on getting one, or more, professional organization interested in leading the proposed solution. The author recognized these approaches may have the same low interest level occurring during this study but success will be dependent on maximizing the distribution of the results.

Leader's Role in Implementing Proposed Solution

Once an organization determines to conduct further research into TEACH Act best practices, the leader will have to gain the support of the individual members that have agreed to participate. Hopefully, the decision was based on members petitioning for the study, thereby reducing the level of resistance. The leader should develop material outlining the basic problem, the benefits of participating, and the level of support expected. Using this data, the leader may have to tailor the approach for each member institution based on its unique situation and concerns. Since the study is seeking to develop recommended best practices, if a member does not want to participate then the leader should accept the decision and move on with the members willing to participate.

The leader will also have to gain the support of the members to include representatives from the copyright owners on the team. There may be additional resistance if there has been past conflict between copyright owners and institutions. The leader will need to address the benefits of owners' participation in developing practices accepted by users and owners, reducing the potential for infringement complaints.

The next step after getting member acceptance is to establish the group and define individual roles and responsibilities as well as outlining a plan and schedule. The result of defining responsibilities and a proposed timeline will provide the framework necessary for the leader to guide the effort. As this is a loosely coupled system, each individual

member will have established its own prioritization on the proposed solution based on its resources and internal needs. The leader will need to recognize this and be prepared to work with individual institutions and this may require the leader to take proactive actions to keep members motivated to complete tasks.

An added dimension the leader should prepare to address is the fact this loosely coupled system will likely exist more in a virtual manner than physical. Members will be comprised of institutions from around the United States requiring interaction to be conducted through distance communication methods. Planning and leading a virtual team will require a different set of leadership skills, as indirect contact does not provide the same visual or aural clues available in a face-to-face environment. Interaction with members should be more deliberate in virtual environments to ensure each member has the ability to express concerns or ideas and the leader can maintain awareness. Resolving conflict or encouraging participation virtually should be addressed early such as developing rules of engagement for meetings or a group charter. Leadership in virtual environments should require more early and deliberate planning and development of processes or procedures focused on encouraging participation and maintaining motivation.

External Implications for the Organization.

The method in which a professional organization develops the TEACH Act best practice guides could have positive or negative implications. The primary negative implication is the copyright owners could consider the guide to infringe upon their exclusive rights. This could lead to legal challenges to the organization and its individual institution members ending in fines or, at a minimum, eliminating the guide. The impacts

of these legal cases and decisions could reduce the organization's reputation and decrease membership. The inclusion of copyright owners in the development process should significantly reduce the probability of legal action.

If the users and owners accept the best practice guide, and more importantly institutions implement the guide, there are several potential positive organizational gains. The organization could gain acknowledgement as the leading expert in the TEACH Act and its implementation. As the acknowledged experts, the organization could be asked to participate in studies and committees seeking to modify the TEACH Act or serve as a consolidated voice for its membership. The improved reputation could increase membership and requests to lead other relevant studies. If properly planned, the potential benefits should overcome any negative impact.

Evaluation and Timeline for Implementation and Assessment

The implementation timeline will be dependent upon which organization decides to conduct further research, its internal processes, and membership commitments. Based on the literature review of the Fair Use guides, it is reasonable to predict a six-month to one-year timeframe for development. The timeline will be dependent upon the effort's complexity, whether the organization attempts to address all TEACH Act aspects or focuses on one specific item. It is the author's recommendation that development occur in phases with releases of multiple TEACH Act best practices guides. Each guide should address a unique TEACH Act requirement or focus on a specific type of copyrighted material such as video or dramatic plays. The owners of each type of copyrighted material will likely have a different point of view on how their material should be used in distance education increasing the difficulty of defining a single solution. Development of

focused guides should reduce the timeline required and allow for the guides to be more direct and specific in content.

Once a guide is published, the organization will need to advertise its existence amongst its membership and in peer-reviewed publications. After a minimum of six months, to allow time for institutions to attempt implementation, the organization should conduct a survey of its members to assess two key areas. First, the survey should determine if the best practice guide increased the number of institutions establishing formal TEACH Act programs. Second, the survey should gather data on the implementation process of each best practice, the issues each institution faced, the actions taken to address them, and any lessons learned. Data analysis should be used to improve the guide or identify areas requiring further research. The survey cycle should continue until data indicates there are minimal issues or lessons learned and a steady state has been achieved. Because technology continues to improve rapidly and copyright law is constantly being reviewed, the organization should consider implementing a formal review process for each guide. The frequency of the review will depend upon changes in the influencing factors, but the author recommends an annual cycle until data indicates otherwise.

Implications

Practical Implications

The TEACH Act's purpose was to reduce the copyright barriers existing for distance education and put the distance classroom on par with the live classroom experience. However, the inclusion of new institutional requirements increased the complexity adding new barriers. The literature outlined the limitations and perceived

issues concluding the requirements impeded wide spread implementation, though recognizing several institutions did create TEACH Act programs. In the 14 years since its enactment, there were no studies located that conducted an assessment of successful programs to identify any best practices. Given the potential TEACH Act benefits and the limited number of successful institutions, the author's intent was to study the successes to define best practices other institutions could use.

In considering the study's potential impacts, the author determined the study would improve upon current TEACH Act research data by focusing on defining best practices. The data and results would then encourage institutions to re-consider previous decisions and pursue the TEACH Act, increasing its practice and providing institutions with the desired distance education benefits. Finally, there was potential the results could be used to affect change in policy and, possibly, the law.

Despite the limited data, analysis was able to identify commonalities among institutions in approaches or structure. The use of common concepts regarding organization, policy and guidance, and use of technology were identified as general best practice areas adding to the current TEACH Act knowledge base. While there were no definitive best practices defined there were general areas identified. Using the general areas, institutions can focus their limited resources during TEACH Act implementation efforts.

Implications for Future Research

The proposed solution is a recommendation for future research. However, based on the study design issues and further consideration of data in the literature review, careful consideration on potential future research's scope is warranted. During this study

the data allowed the author to determine an implementation rate and an indication of a need and interest in TEACH Act best practices. Additionally, the questionnaire gathered institutional Carnegie Classification and Size data with the intent to determine if a certain category of institution was more likely to have a TEACH Act program or expressed interest in best practices. The Carnegie data could have identified if size and budget was a factor in TEACH Act implementation decisions and possibly identify future research to modify best practices for other institutional categories. The small sample size and limited direct response data questions whether these results are an accurate representation of the larger accredited, non-profit, higher education institution population. Definitive data on implementation rates, Carnegie Classifications, and interest level in best practices are important in shaping future TEACH Act best practice research. The author recommends that further research on implementation rates, impact of Carnegie data on implementation, and the interest in development of TEACH Act best practices. The research should expand the number of institutions review and ensure that all the Carnegie classification and size are represented. The data and results from this research will enable organizations to concentrate future best practice research where it will have the highest probability of positive impact.

The lesson learned from this study is a single general TEACH Act study would be difficult to develop, even with an organization with a large support base to manage it. Addressing every requirement and how to apply it to the various types of copyright material where each type of owner may have a different interpretation of the requirements and terminology would create a series of complex situations the organization would have to manage. The most likely approach would require the

organization to address each situation individually and then attempt to merge the solutions, which may add new issues. If an organization is going to have to individually address special situations requiring specific subset of experts from the users and copyright owners, it would stand to reason that TEACH Act best practice guides would be best developed at this same level. Future TEACH Act best practice research should consider the Fair Use guide development where guides focused on one type of copyrighted material such as dramatic poetry or videos. Organizations should also consider research focused on a single TEACH Act requirement such as establishing policy and defining the best practices and examples useful for institutions beginning TEACH Act implementation. The development of specific TEACH Act topic best practices guides will allow the organization to charter a smaller team, reduce resources required, and shorten the schedule. It will also impact the leadership implications allowing the leader to develop a well-structured approach for the smaller team.

Implications for Leadership Theory and Practice

The proposed solution recommends a professional organization continue the author's effort to gather more data and define definitive TEACH Act best practices. From a leadership perspective, the professional organization is not structured in a standard format with formal roles and chains of command. These organizations are more of a consortium of institutions or members with varying differences in structure, assumptions, and needs working together to address a common issue or issues. The power of this type of structure is the ability to integrate the member's strengths to create capabilities that are more than a sum of the parts. Leaders in this type of organization must be aware they do not have the typical leader role, one that has some level of

authority over the team members, and recognize the need to use a variety of leadership styles.

In this type of organizational structure, the leader's primary role is establishing and maintaining motivation. The leader should assess the needs of each member and develop a strategy on how to get their support for the project as well as continued motivational actions. The leader's focus is defining specific institutional answers to the question of what's-in-it-for-me to be a part of the research. However, the leader should not just say what the institution wants to hear, the leader needs to be genuine in what is stated and are supported by actions. By establishing and maintaining authenticity, the members recognize the leader's motivation is to support their needs and is concerned about their best interests. But best interests can conflict in the group dynamic and not addressing the conflicts can impede the project from proceeding. The leader must work towards convincing the members to move from the what's-in-it-for-me to what's-the-best-solution for the whole. The leader must seek to transform individual members who want to participate in and benefit from the project and work towards a common goal, which may require members to sacrifice some of their needs for the overall benefit of the group. Transformative leadership skills will be critical in getting a disparate group working towards a common goal.

Charismatic leadership techniques may provide additional options in gaining and maintaining motivation. During the study the author recognized charismatic leadership would not be a feasible technique, as he could not establish himself as an expert the institutions would want to learn from and follow (Haslam, Reicher, & Platow, 2011). A professional organization can address this by selecting leaders that are considered experts

in TEACH Act or, at least, educational copyright. This expertise does not have to originate from within the professional organization, it could be a recognized expert from a member institution such as the copyright expert from a successful TEACH Act compliant institution. Using a member as the leader may be more beneficial in gaining support. The member leader can show authenticity and is able to better understand the members concerns having already successfully dealt with the TEACH Act. Regardless of how an organization manages the leadership of future research, the organization and the leader should consider varying leadership skills and approaches to maintain the relationship and motivation within the team.

Summary of the Study

Education is a continual balancing act of providing students with access to data necessary to meet the pedagogical objectives at an affordable cost versus protecting copyright owner's exclusive rights. The U.S. government recognized education's role in promoting science as well as the need to be able to use copyrighted material without infringing on the owner's rights. In 1976, a new copyright law was enacted that included two education specific exemptions. The exemptions allowed the performance and display of specific types of material in the live classroom and distance education, which at the time was defined as instructional broadcasting to other classrooms.

In the 1990s, digital technology and the internet changed how educational institutions provided distance education. The ability to reach rural or working students, who could not attend normal scheduled classes, via computers that quickly overtook television broadcasting as the preferred distance education method. However, distance education related copyright law had not been updated to reflect the new technology.

Because of this, distance education classes could not provide access to the same information as the live classroom severely limiting the effectiveness of distance education.

Educational institutions lobbied to have copyright law updated to reflect technology. In 1998, Congress directed the U.S. Copyright Office to study the issue and return recommended changes to copyright law. In its first report, the Copyright Office recommended the distance education exemption mirror the live classroom exemption. The copyright owners protested that digital technology allowed for simple, quick, and perfect reproduction and the internet provided the ability to distribute freely to a larger audience than currently possible. After negotiations between copyright owners and the educational users, the Copyright Office drafted a revised version of recommendations. The revised version included a series of requirements institutions must meet before taking advantage of the exemption. The revision, called the Technology, Education and Copyright Harmonization (TEACH) Act, was approved by Congress and enacted in 2002.

While the law was available, the requirements and the ambiguous language increased the confusion and difficulty in applying the law. Institutions were left to define terms such as *reasonable and limited portion* or *technically feasible* without any reference point or additional guidance. The concern was an institutional interpretation could be determined to be an infringement by an owner, leading to legal issues. In addition, the costs for the technology requirements and the personnel required to manage them were identified as an impediment. The literature implied the perceived issues were the reason why there is a low TEACH Act implementation rate.

Since the TEACH Act enactment, numerous peer-reviewed articles have recounted the history leading to the law, outlined the benefits, and identified the perceived issues. Several articles identified institutions that successfully implemented the TEACH Act but provided just a brief program description without any details on how the programs were designed. There have not been any formal studies defining the true TEACH Act implementation issues, assessing how successful programs were implemented, or determining any best practices reducing implementation issues.

The fact there are successful TEACH Act programs but no supporting data on the programs' design or identification of best practices led the author to pursue defining TEACH Act best practices and lessons learned. The aim of this study was to develop a best practice guide other institutions could use in developing compliant programs. The study used a qualitative grounded theory method enabling the use of multiple sources and data collection methods. The concept was to use the data from each collection phase to focus the next phase. The first phase was a questionnaire focused on identifying TEACH Act issues and institutions that have or are implementing the TEACH Act. This data would confirm if the issues identified in the literature were a factor on implementation decisions and refine the target audience for the interview phase. The interview phase gathered direct evidence of methods, policy, tools, as well as anecdotal experiential data on implementation and results.

The target audience was accredited non-profit higher learning institutions. The list of potential institutions started with the successful institutions identified in the literature. The list was expanded to include institutions rated as having the best distance education programs in several categories. This method was used because there had been

no data gathered identifying TEACH Act compliant institutions and that quality distance education programs were more likely to have considered the TEACH Act.

Invitations were sent to an original list of 25 institutions' copyright organizations or individuals requesting their participation in the questionnaire phase. As institutions declined or there was no response, invitations were sent to an additional 21 institutions. During this phase, one institution responded with a concern that the consent form did not provide complete anonymity, which may be a reason why the response rate was low. Based on this, the author revised the questionnaire to be completely anonymous and allow institutions to opt into the interview phase. Despite the changes, only nine of 46 invited institutions agreed to participate in the questionnaire. The questionnaire identified four institutions qualified for the interview but only three consented to be interviewed. To address the small sample size, a third data collection phase, website research, was added to collect additional details from the 46 invited institutions and an additional 14 institutions in the best practice topic areas identified in analysis.

The questionnaire results provided an initial confirmation the issues described in the literature influenced TEACH Act decisions. Language ambiguity was the primary issue with four of five respondents followed by the cost of technology, staff costs, and legal concerns. This data provided focus areas for further analysis in best practice methods from interview and website data.

Interview and website analysis identified general best practice categories, but there was not enough data to define any specific best practices. The results indicated successful programs established centralized copyright expertise primarily located in the library because research librarians frequently deal with copyright issues. The institutions

also developed copyright education, webinars, or tutorials guiding faculty and staff in TEACH Act and provided access to technology necessary to restrict access, limit reproduction, and reduce dissemination, though there were no significant commonalities between the methods and types. Finally, each institution recognized that policy, which mainly repeats the law's content, is not sufficient and developed supplemental guidance on how the institution interprets and implements the TEACH Act.

The results defined seven general best practices categories encouraging additional research before specific examples can be defined. The author proposed that a professional organization such as the Association of Research Libraries conduct additional research. The issues the author faced in gaining support and participation should be overcome because organization's members have agreed to participate in organizational activities and would have approved the research study. The solution also recommended future any TEACH Act research studies consider the Center for Media and Social Impact's work accomplished on the Fair Use best practices. The Center developed a series of guides with users and owners on specific types of copyright material such as online videos or poetry. The smaller focused studies should avoid having to address conflicting perceptions between different types of copyright owners and be able to define specific best practices. The development of best practice guides will provide educational institutions with tools, agreed by users and owners as acceptable, necessary to implement the TEACH Act and increase the effectiveness of distance education to a level comparable to the live classroom experience.

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U.S.C., Section 110(2), the Technology, Education, and Copyright Harmonization Act of 2002. Retrieved from

[http://www.heinonline.org.cuhsl.creighton.edu/HOL/Page?handle=hein.crs/crsaffc0001&start_page=\[i\]&collection=congreg&id=2](http://www.heinonline.org.cuhsl.creighton.edu/HOL/Page?handle=hein.crs/crsaffc0001&start_page=[i]&collection=congreg&id=2)

Appendix A

Institutions Invited to Participate in the Questionnaire

Arizona State University
 Ball State University
 Brigham Young University
 Carnegie Mellon University
 Case Western Reserve University
 Colorado State University
 Columbia University in the City of New York
 Creighton University
 Duke University
 Eastern Kentucky University
 Embry-Riddle Aeronautical University
 Emory University
 Florida State University
 Fort Hayes State University
 Franklin University
 George Washington University
 Indiana University – Bloomington
 John Hopkins University
 Kent State University
 Loyola University – Chicago
 New York University
 North Carolina State University
 Ohio State University
 Pennsylvania State University
 Purdue University
 Regis University
 Saint Joseph's University
 Stanford University
 Tiffin University
 University of Cincinnati
 University of Dayton
 University of Florida
 University of Georgia
 University of Illinois at Urbana-Champaign
 University of Maryland – University College
 University of Michigan – Ann Arbor
 University of Nebraska - Lincoln
 University of North Carolina at Chapel Hill
 University of North Carolina at Charlotte
 University of North Dakota
 University of Texas
 Utah State University

Washburn University
Washington State University
Wright State University

Appendix B

Questionnaire

Thank you for participating in the Technology, Education and Copyright Harmonization (TEACH) Act (click [here](#) for a brief description of the TEACH Act) best practices research study from Creighton University. The research study is aimed at identifying best practices used to implement the TEACH Act amongst accredited, non-profit post-secondary educational institutions

The questionnaire is completely anonymous, however, if you wish to receive a copy of the research results please enter your name and email address at the end of survey where indicated.

Please complete the questionnaire by marking the circle corresponding to your response or inserting text for each item. Please complete the questionnaire by _____ . Thank you for taking the time to complete this questionnaire

Section 1 – TEACH Act Eligibility

1. Is your educational institution accredited by one of the regional accreditation agencies recognized by the Council for Higher Education Accreditation (CHEA)?	YES <input type="radio"/>	NO <input type="radio"/>
2. Is your educational institution non-profit or not-for-profit?	YES <input type="radio"/>	NO <input type="radio"/>

Your responses to these items indicate your institution is not eligible because you are either not accredited or are not a non-profit or not-for-profit educational institution.

I want to thank you taking time to participate in this study and if you wish to receive a copy of the research results please enter your name and email address below:

Name: _____

E-Mail Address: _____

Section 2 – TEACH Act Awareness

3. Does your educational institution provide on-line or distance education programs or uses digital technology (such as a learning management system) to transmit course materials in support of live course offerings?	YES <input type="radio"/>	NO <input type="radio"/>
4. As an accredited non-profit or not-for-profit educational institution, are you aware of the protections afforded by the TEACH Act of 2002?	YES <input type="radio"/>	NO <input type="radio"/>

5. Did your educational institution consider implementing the TEACH Act?	YES <input type="radio"/>	NO <input type="radio"/>
6. If you did not opt to implement the TEACH Act, please describe the reasons for not adopting the Act such as:		
a. Ambiguous terminology to difficult to define		
b. Costs of required technical solutions		
c. Costs of staff required to manage program		
d. Concerns of legal action		
e. Other		
7. If not using the TEACH Act, would having a best practice guide be useful in future implementation efforts?	YES <input type="radio"/>	NO <input type="radio"/>

Your responses to these questions indicate your institution elected not to implement the TEACH Act. The remaining sections of the questionnaire seek data from institutions that have implemented the Act.

However, your responses will allow for an understanding of the level of TEACH Act implementation, general issues for not implementing, and interest in a best practice guide.

I want to thank you taking time to participate in this study and if you wish to receive a copy of the research results please enter your name and email address below:

Name: _____

E-Mail Address: _____

Your answers to the previous section indicate your institution meets the eligibility requirements and implemented the TEACH Act.

The following questions seek to gather basic data on how your institution implemented the Act.

Section 3 – TEACH Act Implementation (click [here](#) for link to a complete copy of the TEACH Act language)

POLICY

8. What year did your institution implement TEACH Act?	
9. Did your institution establish copyright policy or policies in compliance with the TEACH Act?	YES <input type="radio"/> NO <input type="radio"/>
10. Did this policy or policies specifically address only the TEACH Act or was it integrated with other copyright policy?	TEACH Act Integrated <input type="radio"/> <input type="radio"/>
11. Is your institution willing to provide a copy of the copyright policy that includes the TEACH Act to be analyzed for the potential as a best practice? If yes, please send a copy to the researcher with this questionnaire to the following email: marcshaver@creighton.edu.	YES <input type="radio"/> NO <input type="radio"/>
12. Did your institution find the Act's language ambiguous?	YES <input type="radio"/> NO <input type="radio"/>
14. Did your institution attempt to define, in policy or process, any of the following terms within Section 110(2)? Check all that apply	
a. Mediated Instructional Activities ~ 110(2)	<input type="checkbox"/>
b. Reasonable or limited portions ~ 110(2)	<input type="checkbox"/>
c. Class Session ~ 110(2)(A)	<input type="checkbox"/>
d. Directly related and of material assistance ~ 110(2)(B)	<input type="checkbox"/>
e. Technically feasible ~ 110(2)(C)	<input type="checkbox"/>
f. Technical measure that reasonably protects ~ 110(2)(D)(ii)(I)	<input type="checkbox"/>
g. Unauthorized further dissemination ~ 110(2)(D)(ii)(I)(bb)	<input type="checkbox"/>
h. Reasonably be expected to interfere ~110(2)(D)(ii)(II)	<input type="checkbox"/>
i. Other (Write In)	
If you answered yes to any of these terms, please provide the definitions in the space below	
14. Has the original policy or processes been updated?	YES <input type="radio"/> NO <input type="radio"/>
15. If yes, please describe the reason for the update	

FACULTY/STAFF/STUDENT AWARENESS

16. How does your institution ensure faculty and staff are aware of and compliant with copyright policy, and specifically the TEACH Act? Check all that apply	
a. Post policy on website	<input type="checkbox"/>
b. Requires faculty and staff to read policy and sign	<input type="checkbox"/>

<i>affidavit or acknowledgment</i>	
<i>c. Provides educational courses or seminars</i>	<input type="checkbox"/>
<i>d. Uses a central copyright office, committee, or individual to review compliance</i>	<input type="checkbox"/>
<i>e. Other (Write In)</i>	
17. If education about the TEACH Act is provided, is it provided by an institutional organization or through a third party vendor or organization?	Institute Third Party <input type="radio"/> <input type="radio"/>
Can you provide the researcher access to the TEACH Act educational material?	YES NO <input type="radio"/> <input type="radio"/>
18. How are students notified of copyright policy and that copyrighted material may be included in a course? Check all that apply	
<i>a. Student handbook</i>	<input type="checkbox"/>
<i>b. Requires students to read policy and sign affidavit or acknowledgment</i>	<input type="checkbox"/>
<i>c. Provides educational courses or seminars</i>	<input type="checkbox"/>
<i>d. Notice of copyright material use in course syllabus or online course overview</i>	<input type="checkbox"/>
<i>e. Other (Write In)</i>	

TECHNOLOGICAL MEASURES

19. The TEACH Act requires institutions to limit access to copyrighted digitally transmitted course material to only to students officially registered in the course. How does your institution enforce this requirement? Check all that apply	
<i>a. None</i>	<input type="checkbox"/>
<i>b. Password protection</i>	<input type="checkbox"/>
<i>c. Specialized software (please identify software in text box below)</i>	<input type="checkbox"/>
<i>d. Specialized hardware (please identify hardware in text box below)</i>	<input type="checkbox"/>
<i>e. Internal process(es)</i>	<input type="checkbox"/>
<i>f. Other (Write In)</i>	
20. The TEACH Act requires institutions to put in place strategies to prevent reproduction, retention, and further dissemination of copyrighted digital course materials. What measures does your institution use? Check all that apply	
<i>a. None</i>	<input type="checkbox"/>
<i>b. Read-only versions of documents</i>	<input type="checkbox"/>
<i>c. Disable printing capability</i>	<input type="checkbox"/>
<i>d. Disable cut and paste capability</i>	<input type="checkbox"/>

<i>e. Internet protocol checking</i>	<input type="checkbox"/>
<i>f. Key encryption</i>	<input type="checkbox"/>
<i>g. Time-limited access</i>	<input type="checkbox"/>
<i>h. Streaming video / audio software</i>	<input type="checkbox"/>
<i>i. Digital watermark</i>	<input type="checkbox"/>
<i>j. Impose transparent image over copyrighted material</i>	<input type="checkbox"/>
<i>k. Other (Write In)</i>	
21. Have changes in technology required your institution to change TEACH Act policy, processes, or tools?	YES <input type="radio"/>
	NO <input type="radio"/>
<i>If yes, please describe the change(s) and the impact it had on your institution's policy, processes, and tools.</i>	

I want to thank you taking time to participate in this study and if you wish to receive a copy of the research results please enter your name and email address below:

Name: _____

E-Mail Address: _____

Appendix C

Revised Questionnaire

Thank you for participating in the Technology, Education and Copyright Harmonization (TEACH) Act best practices research study from Creighton University. For a brief description of the TEACH Act click [here](#)

The research study is aimed at identifying best practices used to implement the TEACH Act amongst accredited, non-profit post-secondary educational institutions

The questionnaire is completely anonymous, however, if you wish to receive a copy of the research results please enter your name and email address at the end of survey where indicated.

Please complete the questionnaire by marking the circle corresponding to your response or inserting text for each item. Please complete the questionnaire by XX XXX XX. Thank you for taking the time to complete this questionnaire

Section 1 – Institutional Demographics and Carnegie Classifications

This first section gathers Carnegie Classification of Institutions of Higher Education focused on the basic classification categories and size & setting. This data will be used to determine if there is, are, classifications more likely to implement the TEACH Act. This will enable the researcher to focus questions during the interview phase to address how the lessons learned and best practices could be adapted for use by institutions in other classifications.

2. Is your institution Public or Private?	Public <input type="radio"/>	Private <input type="radio"/>
2. Is your educational institution non-profit or not-for-profit?	YES <input type="radio"/>	NO <input type="radio"/>
3. What is your institution's Basic Carnegie Classification? For more information on the Basic Carnegie Classification definitions please click here.	Select One	
R1: Doctoral Universities – Highest research activity		
R2: Doctoral Universities – Higher research activity		
R3: Doctoral Universities – Moderate research activity		
M1: Master's Colleges and Universities – Larger programs		
M2: Master's Colleges and Universities – Medium programs		
M3: Master's Colleges and Universities – Smaller		

programs	
Baccalaureate Colleges: Arts & Sciences Focus	
Baccalaureate Colleges: Diverse Fields	
Baccalaureate/Associate's Colleges: Mixed Baccalaureate/Associate's Colleges	
Baccalaureate/Associate's Colleges: Associate's Dominant	
Associate Colleges	
4. What is your institution's Carnegie Size and Setting Classification? For more information on the Carnegie Size and Setting Classification definitions please click here.	Select One
Four-year, very small, primarily nonresidential	
Four-year, very small, primarily residential	
Four-year, very small, highly residential	
Four-year, small, primarily nonresidential	
Four-year, small, primarily residential	
Four-year, small, highly residential	
Four-year, medium, primarily nonresidential	
Four-year, medium, primarily residential	
Four-year, medium, highly residential	
Four-year, large, primarily nonresidential	
Four-year, large, primarily residential	
Four-year, large, highly residential	
Exclusively graduate/professional	
Two-year	

Section 2 – TEACH Act Awareness

This section seeks data on whether your institution is aware of the TEACH Act, if you have or have not implemented the Act, and the challenges your institution identified.

4. Does your educational institution provide on-line or distance education programs or uses digital technology (such as a learning management system) to transmit course materials in support of live course offerings?	YES <input type="radio"/>	NO <input type="radio"/>
5. As an accredited non-profit or not-for-profit educational institution, are you aware of the protections afforded by the TEACH Act of 2002?	YES <input type="radio"/>	NO <input type="radio"/>
6. Did your institution opt to implement the TEACH Act?	YES <input type="radio"/>	NO <input type="radio"/>
7. If you did not opt to implement the TEACH Act, please describe the reasons for not adopting the Act		

such as:	
a. Ambiguous terminology to difficult to define	
b. Costs of required technical solutions	
c. Costs of staff required to manage program	
d. Concerns of legal action	
e. Other (Insert additional reasons in the text box provided)	
8. If not using the TEACH Act, would having a best practice guide be useful in future implementation efforts?	
Extremely useful	
Moderately useful	
Slightly useful	
Neither useful or useless	
Slightly useless	
Moderately useless	
Extremely useless	

Your responses to these questions indicate your institution elected not to implement the TEACH Act. The remaining sections of the questionnaire seek data from institutions that have implemented the Act.

However, your responses will allow for an understanding of the level of TEACH Act implementation, general issues for not implementing, and interest in a best practice guide.

I want to thank you taking time to participate in this study and if you wish to receive a copy of the research results please enter your name and email address below:

Name: _____

E-Mail Address: _____

Section 3 –

Your answers to the previous section indicate your institution meets the eligibility requirements and implemented the TEACH Act.

The following questions seek to gather basic data on how your institution implemented the Act.

TEACH Act Implementation (click [here](#) for link to a complete copy of the TEACH Act language)

POLICY

9. What year did your institution implement TEACH Act?	
10. Did your institution establish copyright policy or policies in compliance with the TEACH Act?	YES NO <input type="radio"/> <input type="radio"/>
11. Did this policy or policies specifically address only the TEACH Act or was it integrated with other copyright policy?	TEACH Act Integrated <input type="radio"/> <input type="radio"/>
12. Did your institution find the Act's language ambiguous?	YES NO <input type="radio"/> <input type="radio"/>
13. Did your institution attempt to define, in policy or process, any of the following terms within Section 110(2)? Check all that apply and then provide the definitions in the associated text box	
i. Mediated Instructional Activities ~ 110(2)	<input type="checkbox"/>
j. Reasonable or limited portions ~ 110(2)	<input type="checkbox"/>
k. Class Session ~ 110(2)(A)	<input type="checkbox"/>
l. Directly related and of material assistance ~ 110(2)(B)	<input type="checkbox"/>
m. Technically feasible ~ 110(2)(C)	<input type="checkbox"/>
n. Technical measure that reasonably protects ~ 110(2)(D)(ii)(I)	<input type="checkbox"/>
o. Unauthorized further dissemination~ 110(2)(D)(ii)(I)(bb)	<input type="checkbox"/>
p. Reasonably be expected to interfere ~110(2)(D)(ii)(II)	<input type="checkbox"/>
i. Other (Write In)	
If you answered yes to any of these terms, please provide the definitions in the space below	
14. Has the original policy or processes been updated?	YES NO <input type="radio"/> <input type="radio"/>
15. If yes, please describe the reason for the update	

FACULTY/STAFF/STUDENT AWARENESS

16. How does your institution ensure faculty and staff are aware of and compliant with copyright policy, and specifically the TEACH Act? Check all that apply	
f. Post policy on website	<input type="checkbox"/>
g. Requires faculty and staff to read policy and sign affidavit or acknowledgment	<input type="checkbox"/>
h. Provides educational courses or seminars	<input type="checkbox"/>
i. Uses a central copyright office, committee, or	<input type="checkbox"/>

individual to review compliance	
j. Other (Write In)	
17. If education about the TEACH Act is provided, is it provided by an institutional organization or through a third party vendor or organization?	Institute <input type="radio"/> Third Party <input type="radio"/>
18. How are students notified of copyright policy, their expected compliance, and that copyrighted material may be included in a course? Check all that apply.	
f. Student handbook	<input type="checkbox"/>
g. Requires students to read policy and sign affidavit or acknowledgment	<input type="checkbox"/>
h. Provides educational courses or seminars	<input type="checkbox"/>
i. Notice of copyright material use in course syllabus or online course overview	<input type="checkbox"/>
j. Other (Write In)	

TECHNOLOGICAL MEASURES

19. The TEACH Act requires institutions to limit access to copyrighted digitally transmitted course material to only to students officially registered in the course. How does your institution enforce this requirement? Check all that apply	
g. None	<input type="checkbox"/>
h. Password protection	<input type="checkbox"/>
i. Specialized software (please identify software in text box below)	<input type="checkbox"/>
j. Specialized hardware (please identify hardware in text box below)	<input type="checkbox"/>
k. Internal process(es)	<input type="checkbox"/>
l. Other (Write In)	
20. The TEACH Act requires institutions to put in place strategies to prevent reproduction, retention, and further dissemination of copyrighted digital course materials. What measures does your institution use? Check all that apply	
l. None	<input type="checkbox"/>
m. Read-only versions of documents	<input type="checkbox"/>
n. Disable printing capability	<input type="checkbox"/>
o. Disable cut and paste capability	<input type="checkbox"/>
p. Internet protocol checking	<input type="checkbox"/>
q. Key encryption	<input type="checkbox"/>
r. Time-limited access	<input type="checkbox"/>
s. Streaming video / audio software	<input type="checkbox"/>

t. Digital watermark	<input type="checkbox"/>
u. Impose transparent image over copyrighted material	<input type="checkbox"/>
v. Other (Write In)	
21. Have changes in technology required your institution to change TEACH Act policy, processes, or tools?	YES <input type="radio"/> NO <input type="radio"/>
If yes, please describe the change(s) and the impact it had on your institution's policy, processes, and tools.	

I want to thank you taking time to participate in this study and would like to extend an invitation to participate in the interview phase. If your institution would like to participate please provide the following information below in the text box below

Institution
Contact Name
Email Address
Phone Number

Appendix D

Interview Questions

Interview Protocol: TEACH Act Best Practices

Time of Interview:

Date:

Place:

Interviewer: Marc S. Shaver

Institution Code:

Interviewee Code:

Position of Interviewee:

The study is reviewing educational institutions that have successfully implemented the provisions of the Technology, Education and Copyright Harmonization (TEACH) Act of 2002 to identify possible best practices in policy, process, and tools. These best practices will be compiled and made available for other institutions to review and consider in future efforts to implement the Act.

Questions:

1. What has been your role in your institution's TEACH Act implementation and management?
2. How long did it take your institution to formally implement the Act?
3. What methods were used in the implementation?
 - a. Did your institution establish a formal or ad hoc committee?
 - b. Does this team or committee still exist to support sustainment? If not, how is this accomplished?

- c. Did your institution use outside consultation?
 - d. What disciplines (legal, library, information tech, etc.) and organizations were used?
4. What styles of leadership would you say were used in the process?
- a. Was a team developed? Was it formal or ad hoc?
 - b. Was a leader identified?
 - c. Can you describe the type of leadership used?
 - i. Did the leader try to engage with the team to motivate them towards a goal for the greater good? or
 - ii. Remain objective and consider all information? or
 - iii. Did the leader direct the work and make the decisions?
 - d. Was the leadership initially effective? Please provide examples.
 - e. Based on experience, what leadership characteristics and strengths are required to implement and sustain the TEACH Act program?
5. A primary requirement of the TEACH Act is the establishment of an institutional copyright policy addressing the TEACH Act requirements.
- a. How did your institution develop this policy?
 - b. Where is this policy posted?
 - c. How did your institution address the ambiguous nature of the Act's language?
 - d. Did you consider expansion of existing university copyright policy or creation of a specific TEACH Act policy? Why and what benefits did this approach provide?

- e. Do you feel the policy is adequate?
 - f. Is it easy to understand and enforce?
6. Institutions are required to notify faculty and staff on the TEACH Act and the institution's unique implementation of the provisions.
- a. How is this accomplished in your institution?
 - b. Did your institution develop or purchase education?
 - c. Is it a one-time event or continual learning for the faculty and staff? Why?
 - d. How are new employees educated?
 - e. Has the education been updated based on case law, institutional experiences, or updates in the understanding of the law?
7. A critical provision of the Act is the use of technical measures to provide protection in storage of copyrighted material and limiting dissemination.
- a. How did your institution define "technical measures"? Please provide specific examples. Note: If the institution chose to use only password protection, ask the interviewee to explain their approach and why they felt this met the intent of the law.
 - b. Did your institution purchase special equipment, software, or other technical tools? Please provide specific examples.
8. Technology continues to change, how has this affected your TEACH Act program? Have you had to change your policy, processes, or tools?
9. Based on your institutional knowledge, is the TEACH Act being employed by the faculty and staff?

- a. Is there one school or department more successful in using the provisions of the Act? Please provide examples of the school's or department's successful strategy.
 - b. Were these successes and the associated lessons learned used to improve overall institution practices?
 - c. Have there been instances where an attempt has not been successful? Are there any lessons learned your institution has gathered?
 - d. Can you provide a personal observation as to reasons an institution should or should not implement the Act?
10. Has your institution faced any legal, or other, challenges related to the TEACH Act?
- a. What were the circumstances and result?
 - b. Did this affect a change in policy, processes, or tools?
11. Do you have any personal or professional experiences with the TEACH Act you believe can be useful in defining lessons learned or best practices?

Appendix E

IRB Documentation

Original IRB Approval Letter



Institutional Review Board

2500 California Plaza • Omaha, Nebraska 68178
 phone: 402.280.2126 • fax: 402.280.4766 • email:
 irb@creighton.edu

DATE: September 2, 2016

TO: Marc Shaver
 FROM: Creighton University IRB-02 Social Behavioral

PROJECT TITLE: [872809-1] Technology, Education and Copyright Harmonization Act Best Practices
 SUBMISSION TYPE: New Project

ACTION: DETERMINATION OF EXEMPT STATUS
 DECISION DATE: September 2, 2016

REVIEW CATEGORY: Exemption category # 1

Thank you for your submission of New Project materials for this project. The following items were reviewed in this submission:

- Application Form - 114.1A Application for Determination of Exempt Status Educational Research (UPDATED: 07/30/2016)
- Consent Form - Concept Form - Interview Phase (UPDATED: 08/10/2016)
- Consent Form - Consent Form - Questionnaire Phase (UPDATED: 08/10/2016)
- Creighton - IRB Application Form - Creighton - IRB Application Form (UPDATED: 07/30/2016)
- Letter - Interview Invitation (UPDATED: 06/13/2016)
- Letter - Questionnaire Access Message (UPDATED: 06/13/2016)
- Letter - Questionnaire Participation Invitation (UPDATED: 06/13/2016)
- Proposal - Proposal (UPDATED: 07/6/2016)
- Questionnaire/Survey - Interview Questions (UPDATED: 07/6/2016)
- Questionnaire/Survey - Questionnaire (UPDATED: 07/14/2016)

This project has been determined to be exempt from Federal Policy for Protection of Human Subjects as per 45CFR46.101 (b) 1.

All protocol amendments and changes are to be submitted to the IRB and may not be implemented until approved by the IRB. Please use the modification form when submitting changes.

If you have any questions, please contact Christine Scheuring at 402-280-3364 or christinescheuring@creighton.edu. Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within Creighton University IRB-02 Social Behavioral's records.

Modified Research IRB Approval Letter**Institutional Review Board**

2500 California Plaza • Omaha, Nebraska 68178
phone: 402.280.2126 • fax: 402.280.4766 • email:
irb@creighton.edu

DATE: October 24, 2016

TO: Marc Shaver
FROM: Creighton University IRB-02 Social Behavioral

PROJECT TITLE: [872809-2] Technology, Education and Copyright Harmonization Act Best Practices
SUBMISSION TYPE: Revision

ACTION: DETERMINATION OF EXEMPT STATUS
DECISION DATE: October 24, 2016

Thank you for your submission of Revision materials for this project. The following items were reviewed in this submission:

- Amendment/Modification - Request for Modification of Approved Research - Questionnaire Phase (UPDATED: 10/21/2016)
- Consent Form - Consent Form - Questionnaire Phase v3 (Clean Copy) (UPDATED: 10/21/2016)
- Consent Form - Consent Form - Questionnaire Phase v3 (Tracked Changes) (UPDATED: 10/21/2016)
- Questionnaire/Survey - Questionnaire v3 (Clean Copy) (UPDATED: 10/21/2016)
- Questionnaire/Survey - Questionnaire v3 (Tracked Changes) (UPDATED: 10/21/2016)

The revised documents have been reviewed and approved.

If you have any questions, please contact Christine Scheuring at 402-280-3364 or christinescheuring@creighton.edu. Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within Creighton University IRB-02 Social Behavioral's records.

Original Questionnaire Consent Form

Questionnaire Consent Form

CREIGHTON UNIVERSITY RESEARCH INFORMED CONSENT

Protocol Title: Technology, Education and Copyright Harmonization Act Best Practices

Protocol Number: 872809-1

Principal Investigator's Name and Department: Marc S. Shaver, Interdisciplinary Leadership Doctoral Program

Principal Investigator's Address and Telephone Number: 6100 Millshire Dr, Centerville OH 45459 (937) 671-8514

24-Hour Telephone Number (937) 671-8514

INTRODUCTION: The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 was enacted to provide expanded education copyright exemptions for distance education similar to those allowed for the live classroom setting. Since its inception, there has been debate regarding the intent of the language as well as how institutions can adequately meet all the requirements outlined in Section 110(2) of Title 17 U.S.C. The purpose of this study is to identify the strategies, policies, processes, and tools used by accredited non-profit education institutions that have established a program in compliance with the TEACH Act provisions with the goal of creating a guide outlining lessons learned and best practices for other institutions to consider in TEACH Act implementation strategies. Your institution was selected to participate in this research because it was identified as one of few institutions successfully implementing the Act and is considered an exemplar model or was rated as having one of the best online education programs in the United States.

As the principal investigator, I will be available to answer any questions you may have regarding the study or the development of the guide.

Name of Participating Institution: _____

If you are signing this Consent on behalf of someone else, all references from this point forward to "you" or "your" will mean the Study Participant named above.

Study Purpose and Procedures: This study will involve research to gather data on how successful institutions developed its TEACH Act programs. The study will analyze the data to identify any common practices, concepts, definitions, policies, and tools used and incorporate them into a guide. The study will also identify unique aspects of institutional programs that could be considered best practices or applicable to a specific set of circumstances.

The study will use two data collection phases, a questionnaire and interviews. This consent form is specific to the questionnaire phase, if an institution is selected for the follow-on interview phase, a separate consent form will be provided for each individual

or office interviewed. The questionnaire should not take more than one hour to complete, but more time may be required to gather any examples or documentation the institution decides to provide to support the questionnaire responses.

Benefits of Participating in the Study: As a participating institution, the information you provide can expand the knowledge base on how the TEACH Act's requirements are interpreted by different institutions and what measures in terms of policy, processes, and tools were used to meet the requirements. This data can help other institutions avoid pitfalls and better implement their own programs.

As more institutions begin to use similar terminology definitions, policy constructs, and tools, the larger community could affect both changes in law and investment in technologies, which could improve your program and reduce overhead.

For your institution, if you decide to allow your institution to be associated with lessons learned or best practices, your institution would be recognized as having established best practices and accepted as a leader in employing the TEACH Act.

Risks of Participating in the Study: Because the TEACH Act addresses copyright law, there is a potential risk that information included in the guide associated with your institution could be considered a potential infringement by a copyright owner. The infringement could result in the owner filing a legal action. If this is a concern, your institution could decide not to allow any association of results with your institution. This decision can be changed at anytime throughout the study.

A possible risk involved in this study involves the potential social and psychological risks associated with accidental disclosure of confidential information from the data collected throughout the study.

Methods of storing and securing data are designed to minimize these risks. All data will be coded with a unique institutional identification number and any reference to the institution will be removed. The data will be stored on a removable storage device and secured when the principle investigator is not analyzing the data.

Confidentiality: We will do everything we can to keep your records confidential. However, it cannot be guaranteed. We may need to report certain information to agencies as required by law.

Others may look at records identifying you and this consent form signed by you. The list of people who may look at you research records are:

- The investigator, his dissertation committee, or research staff
- The Creighton University Institutional Review Board (IRB) and other internal departments that provide support and oversight at Creighton

We may present the research findings at professional meetings or publish the results of this research study in relevant journals. However, we will always keep your name, address, or other identifying information private.

Disclosure of Appropriate Alternatives: There are no alternative methods.

Contact Information: If you have any questions please concerning this research, contact Mr. Marc Shaver at (937) 671-8514 or marcshaver@creighton.edu

By signing this consent form, you will not be waiving any of your legal rights that you otherwise would have as a subject in a research study.

Additional Costs to the Subject: There are no anticipated additional costs to the subject.

Consequences of Subject's Decision to Withdraw: There will be no consequences if the subject decides to withdraw from the study. If the subject decides to withdraw, they need to submit a formal request (an email will suffice) to the principal investigator. Upon receipt of the request, the investigator will confirm the request and delete any associated data gathered.

The Creighton University Institutional Review Board (IRB) offers you an opportunity (anonymously if you so choose) to discuss problems, concerns, and questions; obtain information; or offer input about this project with an IRB administrator who is not associated with this particular research project. You may call or write to the Institutional Review Board at (402) 280-2126; address the letter to the Institutional Review Board, Creighton University, 2500 California Plaza, Omaha, NE 68178 or by email at irb@creighton.edu.

A copy of this form has been given to me. _____ Subject's Initials

We would appreciate your feedback on your experience as a research participant at Creighton University; please fill out our questionnaire at <http://www.creighton.edu/participantsurvey>

Bill of Rights for Research Participants

As a participant in a research study, you have the right:

1. To have enough time to decide whether or not to be in the research study, and to make that decision without any pressure from the people who are conducting the research.
2. To refuse to be in the study at all, or to stop participating at any time after you begin the study.

3. To be told what the study is trying to find out, what will happen to you, and what you will be asked to do if you are in the study.
4. To be told about the reasonably foreseeable risks of being in the study.
5. To be told about the possible benefits of being in the study.
6. To be told whether there are any costs associated with being in the study and whether you will be compensated for participating in the study.
7. To be told who will have access to information collected about you and how your confidentiality will be protected.
8. To be told whom to contact with questions about the research, about research-related injury, and about your rights as a research subject.
9. If the study involves treatment or therapy:
 - a. To be told about the other non-research treatment choices you have.
 - b. To be told where treatment is available should you have a research-related injury, and who will pay for research-related treatment.

Revised Questionnaire Consent Form

Questionnaire Consent Form

CREIGHTON UNIVERSITY RESEARCH INFORMED CONSENT

Protocol Title: Technology, Education and Copyright Harmonization Act Best Practices

Protocol Number: 872809-1

Principal Investigator's Name and Department: Marc S. Shaver, Interdisciplinary Leadership Doctoral Program

Principal Investigator's Address and Telephone Number: 6100 Millshire Dr, Centerville OH 45459 (937) 671-8514

24-Hour Telephone Number (937) 671-8514

INTRODUCTION: The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 was enacted to provide expanded education copyright exemptions for distance education similar to those allowed for the live classroom setting. Since its inception, there has been debate regarding the intent of the language as well as how institutions can adequately meet all the requirements outlined in Section 110(2) of Title 17 U.S.C. The primary purpose of this study is to identify the strategies, policies, processes, and tools used by accredited non-profit education institutions with an TEACH Act compliant program. The study will also identify barriers institutions identified during consideration and implementation. The study's goal is the creation of a guide outlining lessons learned and best practices for other institutions to consider in TEACH Act implementation strategies. Your institution was selected to participate in this research because it was identified as one of few institutions successfully implementing the Act and is considered an exemplar model or was rated as having one of the best online education programs in the United States.

As the principal investigator, I will be available to answer any questions you may have regarding the study or the development of the guide.

Study Purpose and Procedures: This study will involve research to gather data on how successful institutions developed its TEACH Act programs as well as identify barriers to implementation from institutions that decided not to implement the Act. The study will analyze the data to identify any common practices, concepts, definitions, policies, and tools used and incorporate them into a guide. The study will also identify unique aspects of institutional programs that could be considered best practices or applicable to a specific set of circumstances.

The study will use two data collection phases, a questionnaire and interviews. This consent letter is specific to the questionnaire phase, if an institution opts to participate in the follow-on interview phase, a separate consent letter will be provided. The questionnaire should not take more than one hour to complete, but more time may be required to gather any examples or documentation the institution decides to provide to support the questionnaire responses.

Benefits of Participating in the Study: As a participating institution, the information you provide can expand the knowledge base on how the TEACH Act. First, data will indicate how different institutions interpreted the requirements and identify the barriers faced and whether institutions chose to implement the Act. Second, for those institutions that pursued implementation, the data will identify implementation methods in terms of policy, processes, and tools used to meet the requirements. This data can help other institutions avoid pitfalls and better implement their own programs.

As more institutions begin to use similar terminology definitions, policy constructs, and tools, the larger community could affect both changes in law and investment in technologies, which could improve your program and reduce overhead.

If your institution decides to be associated with lessons learned or best practices, your institution would be recognized as having established best practices and accepted as a leader in employing the TEACH Act. Your institution's determination to authorize association will be sought at the end of the research phase as the investigator is drafting the dissertation and guide. However, your institution can change its decision at any time up to final approval and publication.

Risks of Participating in the Study: Because the TEACH Act addresses copyright law, there is a minimal, but potential, risk that information included in the guide associated with your institution could be considered a potential infringement by a copyright owner. If this is a concern, and as stated earlier, your institution could decide not to allow any institutional association with the results. This decision can be changed at anytime throughout the study up to final approval and publication.

A possible risk involved in this study involves the potential social and psychological risks associated with accidental disclosure of confidential information from the data collected throughout the study.

To minimize risk, the data gathered in the questionnaire phase will be done anonymously and all data will be aggregated to allow analysis of institutional decisions and methods.

To protect the data from accidental disclosure, all data will be stored on a removable storage device and secured in a safe when the principle investigator is not analyzing the data.

Confidentiality: The study will attempt to do everything we can to keep your institution's records confidential in this phase by making the questionnaire anonymous. The only institutional related data collected will be the Basic and Size & Setting Carnegie Classification data. No institutional or personal identification data will be collected unless the institution opts to participate in the follow-on interview phase. At this point, you will be asked to provide contact information to allow the researcher to send an interview consent form and schedule interview(s). This data will not be associated with any previous response details.

Others may look at records identifying you and this consent form signed by you. The list of people who may look at your research records are:

- The researcher and his dissertation committee
- The Creighton University Institutional Review Board (IRB) and other internal departments that provide support and oversight at Creighton

We may present the research findings at professional meetings or publish the results of this research study in relevant journals. However, we will always keep your name, address, or other identifying information private.

Disclosure of Appropriate Alternatives: There are no alternative methods.

Contact Information: If you have any questions please concerning this research, contact Mr. Marc Shaver at (937) 671-8514 or marcshaver@creighton.edu

By accepting the conditions in this consent form and agreeing to participate in the study, you will not be waiving any of your legal rights that you otherwise would have as a subject in a research study.

Additional Costs to the Subject: There are no anticipated additional costs to the subject.

Consequences of Subject's Decision to Withdraw: There will be no consequences if the subject decides to withdraw from the study. If the subject decides to withdraw, they need to submit a formal request (an email will suffice) to the principal investigator. Upon receipt of the request, the investigator will confirm the request and delete any associated data gathered.

The Creighton University Institutional Review Board (IRB) offers you an opportunity (anonymously if you so choose) to discuss problems, concerns, and questions; obtain information; or offer input about this project with an IRB administrator who is not associated with this particular research project. You may call or write to the Institutional Review Board at (402) 280-2126; address the letter to the Institutional Review Board, Creighton University, 2500 California Plaza, Omaha, NE 68178 or by email at irb@creighton.edu.

Name of Participating Institution: _____

Organizational Email Address: _____

A copy of this form has been given to me. _____ Subject's Initials

Upon completion of the study, we would appreciate your feedback on your experience as a research participant at Creighton University; please fill out our questionnaire at <http://www.creighton.edu/participantsurvey>

Bill of Rights for Research Participants

As a participant in a research study, you have the right:

10. To have enough time to decide whether or not to be in the research study, and to make that decision without any pressure from the people who are conducting the research.
11. To refuse to be in the study at all, or to stop participating at any time after you begin the study.
12. To be told what the study is trying to find out, what will happen to you, and what you will be asked to do if you are in the study.
13. To be told about the reasonably foreseeable risks of being in the study.
14. To be told about the possible benefits of being in the study.
15. To be told whether there are any costs associated with being in the study and whether you will be compensated for participating in the study.
16. To be told who will have access to information collected about you and how your confidentiality will be protected.
17. To be told whom to contact with questions about the research, about research-related injury, and about your rights as a research subject.
18. If the study involves treatment or therapy:
 - a. To be told about the other non-research treatment choices you have.
 - b. To be told where treatment is available should you have a research-related injury, and who will pay for research-related treatment.

Interview Consent Form

Interview Consent Form (each individual will be asked to consent to the interview)

CREIGHTON UNIVERSITY RESEARCH INFORMED CONSENT

Protocol Title: Technology, Education and Copyright Harmonization Act Best Practices

Protocol Number: 872809-1

Principal Investigator's Name and Department: Marc S. Shaver, Interdisciplinary
Leadership Doctoral Program

Principal Investigator's Address and Telephone Number: 6100 Millshire Dr, Centerville
OH 45459 (937) 671-8514

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INTRODUCTION: The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 was enacted to provide expanded education copyright exemptions for distance education similar to those allowed for the live classroom setting. Since its inception, there has been debate regarding the intent of the language as well as how institutions can adequately meet all the requirements outlined in Section 110(2) of Title 17 U.S.C. The purpose of this study is to identify the strategies, policies, processes, and tools used by accredited non-profit education institutions that have established a program in compliance with the TEACH Act provisions with the goal of creating a guide outlining lessons learned and best practices for other institutions to consider in TEACH Act implementation strategies. Your institution was selected to participate in this research because it was identified as one of few institutions successfully implementing the Act and is considered an exemplar model or was rated as having one of the best online education programs in the United States..

As the principal investigator, I will be available to answer any questions you may have regarding the study or the development of the guide.

Name of Participating Institution: _____

Name of Participating Individual: _____

If you are signing this Consent on behalf of someone else, all references from this point forward to "you" or "your" will mean the Study Participant named above.

Study Purpose and Procedures: This study will involve research to gather data on how successful institutions developed its TEACH Act programs. The study will analyze the data to identify any common practices, concepts, definitions, policies, and tools used and incorporate them into a guide. The study will also identify unique aspects of institutional programs that could be considered best practices or applicable to a specific set of circumstances.

The study will use two data collection phases, a questionnaire and interviews. This consent form is specific to the interview phase. Each potential interviewee will be

provided with a copy of this consent prior to any interview being conducted. Each individual will be provided the option to ask questions about the study and the interview, review proposed questions, and decide whether to consent. The interview is anticipated to take no longer than 1 hour and may be done in person, over the phone, or using a video conferencing tool such as WebEx. Additional time will be required to review and confirm the transcript of the interview and submitting any additional documentation to be assessed.

Benefits of Participating in the Study: As a participating institution and individual, the information you provide can expand the knowledge base on how the TEACH Act's requirements are interpreted by different institutions and what measures in terms of policy, processes, and tools were used to meet the requirements. This data can help other institutions avoid pitfalls and better implement their own programs.

As more institutions begin to use similar terminology definitions, policy constructs, and tools, the larger community could affect both changes in law and investment in technologies, which could improve your program and reduce overhead.

For your institution, if you decide to allow your institution to be associated with lessons learned or best practices, your institution would be recognized as having established best practices and accepted as a leader in employing the TEACH Act.

Risks of Participating in the Study: Because the TEACH Act addresses copyright law, there is a potential risk that information included in the guide associated with your institution could be considered a potential infringement by a copyright owner. The infringement could result in the owner filing a legal action. If this is a concern, your institution could decide not to allow any association of results with your institution. This decision can be changed at anytime throughout the study.

A possible risk involved in this study involves the potential social and psychological risks associated with accidental disclosure of confidential information from the data collected throughout the study.

Methods of storing and securing data are designed to minimize these risks. All data will be coded with a unique institutional identification number and a special sub-identification code for each interviewed subject. Any reference to the institution or individual will be removed. The data will be stored on a removable storage device and secured when the principle investigator is not analyzing the data.

Confidentiality: We will do everything we can to keep your records confidential.

Others may look at records identifying you and this consent form signed by you. The list of people who may look at you research records are:

- The investigator, his dissertation committee, or research staff

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We may present the research findings at professional meetings or publish the results of this research study in relevant journals. However, we will always keep your name, address, or other identifying information private.

The investigator intends to record each interview for use in creating transcripts of each interview. These audio files will be stored in a secure, standalone storage device and locked up when not in use. Upon approval of the transcript, the audio file will be archived until the completion of the study and submission/approval of the dissertation. At this point the audio files will be deleted.

Disclosure of Appropriate Alternatives: There are no alternative methods.

Contact Information: If you have any questions please concerning this research, contact Mr. Marc Shaver at (937) 671-8514 or marcshaver@creighton.edu

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Additional Costs to the Subject: There are no anticipated additional costs to the subject.

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3. To be told what the study is trying to find out, what will happen to you, and what you will be asked to do if you are in the study.
4. To be told about the reasonably foreseeable risks of being in the study.
5. To be told about the possible benefits of being in the study.
6. To be told whether there are any costs associated with being in the study and whether you will be compensated for participating in the study.
7. To be told who will have access to information collected about you and how your confidentiality will be protected.
8. To be told whom to contact with questions about the research, about research-related injury, and about your rights as a research subject.
9. If the study involves treatment or therapy:
 - a. To be told about the other non-research treatment choices you have.
 - b. To be told where treatment is available should you have a research-related injury, and who will pay for research-related treatment.