

107TH CONGRESS  
1ST SESSION

# S. 487

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## AN ACT

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of copies or phonorecords of such performances or displays is not an infringement under certain circumstances, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. EDUCATIONAL USE COPYRIGHT EXEMPTION.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Technology, Education, and Copyright Harmonization  
6       Act of 2001”.

1 (b) EXEMPTION OF CERTAIN PERFORMANCES AND  
2 DISPLAYS FOR EDUCATIONAL USES.—Section 110 of title  
3 17, United States Code, is amended—

4 (1) by striking paragraph (2) and inserting the  
5 following:

6 “(2) except with respect to a work produced or  
7 marketed primarily for performance or display as  
8 part of mediated instructional activities transmitted  
9 via digital networks, or a performance or display  
10 that is given by means of a copy or phonorecord that  
11 is not lawfully made and acquired under this title,  
12 and the transmitting government body or accredited  
13 nonprofit educational institution knew or had reason  
14 to believe was not lawfully made and acquired, the  
15 performance of a nondramatic literary or musical  
16 work or reasonable and limited portions of any other  
17 work, or display of a work in an amount comparable  
18 to that which is typically displayed in the course of  
19 a live classroom session, by or in the course of a  
20 transmission, if—

21 “(A) the performance or display is made  
22 by, at the direction of, or under the actual su-  
23 pervision of an instructor as an integral part of  
24 a class session offered as a regular part of the  
25 systematic mediated instructional activities of a

1 governmental body or an accredited nonprofit  
2 educational institution;

3 “(B) the performance or display is directly  
4 related and of material assistance to the teach-  
5 ing content of the transmission;

6 “(C) the transmission is made solely for,  
7 and, to the extent technologically feasible, the  
8 reception of such transmission is limited to—

9 “(i) students officially enrolled in the  
10 course for which the transmission is made;

11 or

12 “(ii) officers or employees of govern-  
13 mental bodies as a part of their official du-  
14 ties or employment; and

15 “(D) the transmitting body or  
16 institution—

17 “(i) institutes policies regarding copy-  
18 right, provides informational materials to  
19 faculty, students, and relevant staff mem-  
20 bers that accurately describe, and promote  
21 compliance with, the laws of the United  
22 States relating to copyright, and provides  
23 notice to students that materials used in  
24 connection with the course may be subject  
25 to copyright protection; and

1                   “(ii) in the case of digital  
2                   transmissions—

3                   “(I) applies technological meas-  
4                   ures that reasonably prevent—

5                   “(aa) retention of the work  
6                   in accessible form by recipients of  
7                   the transmission from the trans-  
8                   mitting body or institution for  
9                   longer than the class session; and

10                  “(bb) unauthorized further  
11                  dissemination of the work in ac-  
12                  cessible form by such recipients  
13                  to others; and

14                  “(II) does not engage in conduct  
15                  that could reasonably be expected to  
16                  interfere with technological measures  
17                  used by copyright owners to prevent  
18                  such retention or unauthorized further  
19                  dissemination;” and

20                  (2) by adding at the end the following:

21                  “‘In paragraph (2), the term ‘mediated instruc-  
22                  tional activities’ with respect to the performance or  
23                  display of a work by digital transmission under this  
24                  section refers to activities that use such work as an  
25                  integral part of the class experience, controlled by or

1 under the actual supervision of the instructor and  
2 analogous to the type of performance or display that  
3 would take place in a live classroom setting. The  
4 term does not refer to activities that use, in 1 or  
5 more class sessions of a single course, such works as  
6 textbooks, course packs, or other material in any  
7 media, copies or phonorecords of which are typically  
8 purchased or acquired by the students in higher edu-  
9 cation for their independent use and retention or are  
10 typically purchased or acquired for elementary and  
11 secondary students for their possession and inde-  
12 pendent use.

13 “For purposes of paragraph (2),  
14 accreditation—

15 “(A) with respect to an institution pro-  
16 viding post-secondary education, shall be as de-  
17 termined by a regional or national accrediting  
18 agency recognized by the Council on Higher  
19 Education Accreditation or the United States  
20 Department of Education; and

21 “(B) with respect to an institution pro-  
22 viding elementary or secondary education, shall  
23 be as recognized by the applicable state certifi-  
24 cation or licensing procedures.

1           “For purposes of paragraph (2), no govern-  
2           mental body or accredited nonprofit educational in-  
3           stitution shall be liable for infringement by reason of  
4           the transient or temporary storage of material car-  
5           ried out through the automatic technical process of  
6           a digital transmission of the performance or display  
7           of that material as authorized under paragraph (2).  
8           No such material stored on the system or network  
9           controlled or operated by the transmitting body or  
10          institution under this paragraph shall be maintained  
11          on such system or network in a manner ordinarily  
12          accessible to anyone other than anticipated recipi-  
13          ents. No such copy shall be maintained on the sys-  
14          tem or network in a manner ordinarily accessible to  
15          such anticipated recipients for a longer period than  
16          is reasonably necessary to facilitate the trans-  
17          missions for which it was made.”.

18          (c) EPHEMERAL RECORDINGS.—

19                 (1) IN GENERAL.—Section 112 of title 17,  
20                 United States Code, is amended—

21                         (A) by redesignating subsection (f) as sub-  
22                         section (g); and

23                         (B) by inserting after subsection (e) the fol-  
24                         lowing:

1       “(f)(1) Notwithstanding the provisions of section  
2 106, and without limiting the application of subsection  
3 (b), it is not an infringement of copyright for a govern-  
4 mental body or other nonprofit educational institution en-  
5 titled under section 110(2) to transmit a performance or  
6 display to make copies or phonorecords of a work that is  
7 in digital form and, solely to the extent permitted in para-  
8 graph (2), of a work that is in analog form, embodying  
9 the performance or display to be used for making trans-  
10 missions authorized under section 110(2), if—

11           “(A) such copies or phonorecords are retained  
12       and used solely by the body or institution that made  
13       them, and no further copies or phonorecords are re-  
14       produced from them, except as authorized under sec-  
15       tion 110(2); and

16           “(B) such copies or phonorecords are used sole-  
17       ly for transmissions authorized under section  
18       110(2).

19       “(2) This subsection does not authorize the conver-  
20 sion of print or other analog versions of works into digital  
21 formats, except that such conversion is permitted here-  
22 under, only with respect to the amount of such works au-  
23 thorized to be performed or displayed under section  
24 110(2), if—

1           “(A) no digital version of the work is available  
2 to the institution; or

3           “(B) the digital version of the work that is  
4 available to the institution is subject to technological  
5 protection measures that prevent its use for section  
6 110(2).”.

7           (2) TECHNICAL AND CONFORMING AMEND-  
8 MENT.—Section 802(c) of title 17, United States  
9 Code, is amended in the third sentence by striking  
10 “section 112(f)” and inserting “section 112(g)”.

11          (d) PATENT AND TRADEMARK OFFICE REPORT.—

12           (1) IN GENERAL.—Not later than 180 days  
13 after the date of enactment of this Act and after a  
14 period for public comment, the Undersecretary of  
15 Commerce for Intellectual Property, after consulta-  
16 tion with the Register of Copyrights, shall submit to  
17 the Committees on the Judiciary of the Senate and  
18 the House of Representatives a report describing  
19 technological protection systems that have been im-  
20 plemented, are available for implementation, or are  
21 proposed to be developed to protect digitized copy-  
22 righted works and prevent infringement, including  
23 upgradeable and self-repairing systems, and systems  
24 that have been developed, are being developed, or are  
25 proposed to be developed in private voluntary indus-

1 try-led entities through an open broad based con-  
2 sensus process. The report submitted to the Com-  
3 mittees shall not include any recommendations, com-  
4 parisons, or comparative assessments of any com-  
5 mercially available products that may be mentioned  
6 in the report.

7 (2) LIMITATIONS.—The report under this  
8 subsection—

9 (A) is intended solely to provide informa-  
10 tion to Congress; and

11 (B) shall not be construed to affect in any  
12 way, either directly or by implication, any provi-  
13 sion of title 17, United States Code, including  
14 the requirements of clause (ii) of section  
15 110(2)(D) of that title (as added by this Act),  
16 or the interpretation or application of such pro-  
17 visions, including evaluation of the compliance  
18 with that clause by any governmental body or  
19 nonprofit educational institution.

Passed the Senate June 7, 2001.

Attest:

*Secretary.*



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