

# Legal Issues: Copyright, Accessibility, and FERPA

There are a variety of legal issues that impact instructors in the classroom. The Internet and other digital technologies in education has impacted these same laws and our understanding of how they apply to teaching and learning. The following information is a guide to consider when distributing materials online. Feel free to contact ET@MO for additional information or with assistance in contacting university officials or departments who regularly deal with these issues.

## COPYRIGHT BASICS

The creator of any original work owns the copyright, and the work does not have to be registered for copyright to be effective. There also can be joint ownership for collaborators who create work together. Work also can be made for hire by an employer or person for whom the work is prepared. In this case the employer may hold the copyright. However, there is a difference between who holds the rights to contributions to a collective work versus who may hold the right to the collective work as a whole (i.e., anthology, edited volume with chapters by different authors).

### Copyright Owner Rights

By law, a copyright owner has specific rights to his or her work. These include the right to:

- Reproduce
- Perform or display publicly
- Distribute (sale, lease, rental, gift)
- Prepare derivative works or adaptations

These rights are transferable in whole or in part if the copyright owner chooses to do so. However, if rights are transferred this does not necessarily mean the ownership of the work (material object) is also transferred.

**Who Owns Your Course Site and Related Materials?** If created as a part of a faculty's employment, the online course should be copyrighted to the University Of Missouri Board Of Curators. We recommend that you discuss creating an agreement for use of content prior to creating a Web-based course and most importantly, communicate in advance with your department regarding your course.

- Come to an agreement in advance regarding who owns the intellectual property rights for the course materials you develop as an MU instructor.
- Come to an agreement regarding how the department may use the course after you are no longer the instructor.

**What Should I Know About the TEACH Act?** [Adapted with permission from the October 2002 E-News, University Continuing Education Association (UCEA)]

Current copyright law gives educators the ability to use certain copyrighted works for educational purposes without securing permission or license. The Technology, Education & Copyright Harmonization Act (or simply TEACH Act) is intended to carry the spirit of these exemptions into the digital age, making it possible for an instructor to provide any content online that would otherwise be provided in a classroom.

### Consequences of Infringement

The consequences for copyright infringement may include penalties for actual and statutory damages. The extent of the penalties often will be determined by whether it is judged to be innocent or willful infringement. Other factors influencing outcome include the following:

- Does a registration exist?
- Is owner contact information obtainable?
- Did the use fall under the special nonprofit education and library remission rule?



Specifically main points of the act include:

- Both digital and analog transmission of a work will be covered by the educational exemption from copyright law.
- Current law requires transmission of a work to be sent to a classroom or other place normally used for instruction. The TEACH Act will simply require that the transmission be made by or at the direction of an instructor as part of a class.
- To minimize the risk of copyright infringement through unauthorized distribution, digital works should be safeguarded. To the extent technologically feasible, transmissions of copyrighted works be limited to official course enrollees.
- An educational institution must have nonprofit status in order to take advantage of the exemptions.

## TIPS AND GOOD PRACTICES

Having worked with instructors from across campus, we've assembled some tips and good practices to consider when using someone else's work. If you have questions or concerns, please contact ET@MO, your resource librarian, or legal professional.

**Secure Permission to Use Personal Contributions** When you seek permission to use personal contributions from other faculty, students, presenters or guest lecturers, make sure you request permission to display, copy, or distribute an individual's likeness, words, talent, actions, photographs, illustrations, and/or graphics.

- For what work are you seeking permission?
- Who will "own" the permission?
- Who is seeking the permission?
- What is the purpose for your seeking permission?
- Who will be granting the permission (with signature line)?
- Date of the permission signature (with signature line).

A sample permission form is included in the Appendix.

**Be a Role Model for Your Students** In addition to following the legal guidelines yourself, teach your students how these issues also may apply to them. Demonstrate how to legally use others' published and unpublished materials and student contributions. Discuss the concepts of plagiarism and intellectual property rights. Help students understand the difference between citing or showing sources in the classroom versus copying/publishing materials in print or on the Internet.

## Take Advantage of Existing Options and Resources

- Do the MU Libraries already own or license the material (e.g., full-text articles)?
- Could this be handled through E-Res?
- Is this a situation with which the Libraries' Copyright Clearance Center could assist?
- Do your textbook publishers already provide the material you need in an electronic format, or would they allow you to scan the material for use in an access-controlled environment online? (Contact your publisher's representative. The ET@MO Learning Technology Team provides assistance in conversions and adapting existing course materials to work with publisher-provided materials.)
- Is online distribution the best means of getting this material to your students?
- If you are using student-developed materials, do you have a release form from them to re-use their work?

**Safeguard Materials** for which you have permission, or for which you're claiming fair use.

- Is all the material on a password-protected site?
- Are you using conditional release features in the software to prevent guest access or access by former students?
- Are you posting the requisite copyright notice?

**Post Copyright Protection Notice on Your Site** In addition to such notices as the owner of the copyright might require, recent changes in the law require a notice be posted on the course site and placed in distributed materials. We recommend you place an appropriate disclaimer in your syllabus, the Announcements section of a Blackboard course, or in the footer on the home page of a WebCT course. Your statement could read like this: "Materials used in connection with the course may be subject to copyright protection."

**Practice Common Courtesy** When using colleagues' work, reinforce good working relationships by communicating clearly. When considering intellectual property issues that are more related to professional ethics rather than law, try reversing positions and see how you would feel if you were in the shoes of the other party. Although the Board of Curators co-owns most course materials developed throughout the University of Missouri System, remember that almost all materials are co-owned by their creator. Asking the creator of the materials for permission to copy or modify them can save a lot of upset feelings between individuals, departments, and even campuses.

Specific details to facilitate your copyright request:

- When asking others for use of their intellectual property in Blackboard, WebCT or other systems such as E-Res, stress that you will credit them in a copyright notice.
- Make it clear that you will display their property in a password-protected environment. This can sometimes tip the scales in your favor, particularly with publishers.

### **Campus Copyright Resources**

The University Bookstore provides a service for faculty needing permissions for copyrighted materials to be included as readings within a course packet. MU Libraries provides a service for faculty needing permission to display copyrighted materials on their Web sites or courses. Each of these resources utilizes a national Copyright Clearance Center that charges a fee. Faculty also may request permission directly from copyright owners.

Electronic Reserves (E-Res) allows individual documents to be password protected so a professor can have students outside the class view one resource but not have access to other materials. More information about electronic reserves, a listing of liaison librarians, and information about a new copyright clearance service for MU faculty can be found at: Library Services for Faculty -

<http://web.missouri.edu/~engjudy/facrts.html>.

Information Security & Account Management, University of Missouri IAT Services:

<https://iatservices.missouri.edu/security/>



## AMERICAN DISABILITIES ACT (ADA) & ACCESSIBILITY

The 1990 Americans with Disabilities Act (ADA) requires that U.S. programs and services be accessible to individuals with disabilities. A 1996 Department of Justice ruling makes it clear that ADA accessibility requirements apply to Internet resources. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

### What You Should Know about the ADA and the Internet

The Web offers many educational opportunities for those with physical impairments. In addition to easier access, there are reports that the comfort level is much greater during group discussions where visual impressions and judgments are less likely to occur. Educators who utilize the Internet should be aware of Section 508 of the Rehabilitation Act, which involves agencies that receive federal funding. (Missouri has passed a similar law regarding agencies that receive state funding.) Previously developed Web sites do not have to change in advance of an accommodation request. However, when the request is made the university must make reasonable efforts to provide access to the learning experience at a level equivalent to that of non-handicapped students. Therefore, Section 508 compliance should be taken into account as new MU Web sites are developed and existing ones revised.

### Student Rights and Responsibilities

Include information about students' rights and responsibilities in your syllabus and be aware of the rights and responsibilities of students with special needs. New students may not be aware of these requirements. Know the law for providing access as well as the MU requirements for accommodating special needs.

### Sample Syllabus ADA Statement

The MU ADA Coordinator recommends that faculty include wording similar to the following in their Web course sites:

If you need accommodations because of a disability, if you have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please see me privately after class or at my office.

To request academic accommodations (for example, a note taker), students must also register with the Office of Disability Services (<http://ada.missouri.edu/>), AO38 Brady Commons, 882-4696. It is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. Another resource, MU's Adaptive Computing Technology Center, 884-2828, is available to provide computing assistance to students with disabilities.

## TIPS AND SUGGESTIONS FOR ADA-COMPLIANT PAGE LAYOUT

Create a general page design that provides a simple, consistent layout throughout your site. Keep backgrounds plain and make sure there is enough contrast between background and font color. Use standard HTML and make links descriptive so they are understood out of context (i.e., when a student uses reader software). Design large, easy-to-view buttons, typically in the range of 64 to 72 pixels. It's important that you give careful consideration to your use of images in general. Try to think about them from the user's perspective. Does the image really add anything to the instructional content? If the answer is no, or you have trouble deciding, that's a pretty good clue that this particular image is questionable. Provide alternative ways of supplying information from audio and video. Provide audio and/or video descriptions and captions. Provide transcripts for all audio information. (Feel free to contact ET@MO for more details on appropriate sizes or layout.)

### Screen Readers and Acronyms

We are all used to seeing and using them, so they are an everyday occurrence for most of us. You may know what the acronyms NASA, USA, JFK, LBJ, IBM, IRS stand for. With the possible exception of NASA, a visually impaired user will have a tough time deciphering the screen reader when trying to read these "words." So use acronyms sparingly and provide a full version of the phrase the acronym abbreviates. Since we read many common acronyms as individual letters, it makes sense to format them accordingly. You can accomplish this by simply putting a space between each letter of the acronym. Thus, USA becomes U S A, IBM becomes I B M, and so on. By using this tactic you retain the visual component of the acronym and allow the sight-impaired person to glean the meaning without inducing undue cognitive load.

### Screen Readers and Special Web Features

Computer screen reader software cannot easily cope with special features like Web tables, frames, forms, databases, and applets or plug-ins. Use these features sparingly and consider making alternatives available. To make the screen reader work properly for the assisted student, there are a few things to watch for when designing your Web pages. The points below are given with respect to how a screen reader may render information for the person with a visual impairment.

### Screen Readers and Data Tables

Presenting information in table form is common in most college courses, and the Web in particular. Because data points in a table frequently have specific relationships with each other, it's necessary to enable a screen reader to supply that information in a way that is logically understandable without the visual aid of the table. Special markup in the HTML language is required to accomplish this task. Examples may be found at: <http://www.w3.org/TR/WCAG10-HTML-TECHS/#identifying-table-rows-columns>.

Using the CAPTION tag, which typically provides a short description about a data table, will automatically place the text of your caption directly on top of the data table. Screen readers will read the word "caption" and then read the text of the caption, providing a verbal clue to the nature of the table.

### Screen Readers and Hyperlinks

Try to use specific phrasing when sending someone to an outside link. Keep it as simple as possible and as descriptive as necessary. It is common practice to display links with the entire underlined URL—in all its complexity—as shown in the example above. An alternative method may use a word or phrase in the text to link to the information such as "You may find [examples of table markup](#) at the W3 Website."

Screen reader software, for those with difficulty seeing or reading, will read an underlined link by speaking the word “link” and then speaking the underlined text. If it’s a complete URL, the screen reader will try to speak the letter combinations as actual words and will speak the punctuation marks as well. A linked word or phrase will be read as “link” plus the underlined words of the link. Again, being specific helps the technology work well in addition to providing clarification on the nature of the link.

## Screen Readers and Graphics

Include appropriate, explanatory ALT attributes for graphical elements on your Web page. ALT tags are captions inserted within the HTML code that explain what the graphic represents making an image usable for individuals with visual impairments. Computer reader software will provide the description tag where the graphic would occur such as:

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In the above example you’ll notice there are additional optional attributes called **width**, **height**, **border**, and **align**. The **img src** attribute is not optional, as it specifies the path and name of the image being used. Everything else after that is optional. The ALT attribute allows you to attach a verbal descriptor to an image, giving you the opportunity to explain to users what the image is or does, or how it relates to the rest of the content in your Web page.

Similar to ALT is the SUMMARY attribute. It allows you to include a longer explanation of the item you’re describing. Use SUMMARY when including a longer description. A NULL value for unimportant graphics, which consists of an empty pair of quotation marks. The NULL value should appear as an ALT attribute within the image tag and would be written as: **alt=""**.

## Test your Web pages for ADA compliance

Use multiple browsers (i.e., Netscape, Opera, and Internet Explorer) and various computer platforms with various sized monitors and resolutions to test your web pages. There are also useful testing software available for Web pages but note that these utilities do not work with pages already inside a Blackboard or WebCT course site. Examples include:

- Bobby - <http://bobby.watchfire.com/>
- WAVE - <http://www.wave.webaim.org>
- W3C markup validation service - <http://validator.w3.org>

## ADA Accessibility Online Resources

- o MU Learning Disabilities Policies - <http://web.missouri.edu/~accesscm/table/tableindex.htm>
- o IAT Service’s site on usability - <http://iatservices.missouri.edu/adaptive/webdesign.html>
- o Blackboard’s site product accessibility - <http://products.blackboard.com>
- o WebCT’s site on product accessibility - <http://www.webct.com/accessibility/home>
- o U.S. Department of Justice Americans with Disabilities Act - <http://www.usdoj.gov/crt/ada/adahom1.htm>
- o Section 508 Checklist. From the WebAIM website on Web accessibility issues - <http://www.webaim.org/standards/508/checklist>

## FAMILY EDUCATIONAL RIGHTS & PRIVACY ISSUES

“The Family Educational Rights and Privacy Act (FERPA) is a Federal law designed to protect the privacy of a student’s education records. The law applies to all schools which receive funds under an applicable program of the U.S. Department of Education.” (Family Compliance Office Homepage: <http://www.ed.gov/offices/OM/ferpa.html>, November 29, 2001.)

### What Educators Should Know About FERPA

Due to the wording of this act (which originated in 1974, prior to the Internet) all computer files and records in courses using Blackboard, WebCT, or other online components are considered educational records protected by the act. Simply disclosing the fact that a particular student is enrolled in a course could violate students’ legal rights and put the faculty member – and the university – at risk of legal action. What this means in practice is that students have the right to expect that any material they submit in a course with an online component—as well as their names and other identifying information—will not be viewable by guests or other individuals permitted access to the course. The exception to this is cases in which students have given *explicit, written, signed* consent. Verbal consent or e-mail is insufficient.


Additionally, students who have elected to have their directory information restricted may ask to have their name withheld from other members of the course. Legally and ethically, such requests must be taken seriously. This information could compromise the safety of the student; there are cases where stalkers have creatively used enrollment information to terrorize their victims. Discuss concerns with students. Find out which portions of your course are causing concerns and why. If you cannot readily fulfill the student’s expectations, look for a compromise solution.

### How does it apply to WebCT & Blackboard?

1. Under FERPA, it is not permissible to reveal the course or courses in which a student is enrolled (without prior written consent) to anyone except as defined in the University of Missouri’s “Collected Rules and Regulations,” 180.020 STUDENT RECORDS, section M. (<http://www.system.missouri.edu/uminfo/rules/information/180020.htm>)
2. Only “Directory Information” as defined by the University may be released regarding a student. Students may elect to have their directory information withheld.
3. Since all computer files and computer generated information on a student maintained by the institution are considered educational records under the law, all data posted by or about a student in WebCT or Blackboard is, at this time, considered an educational record covered by the act. (Also note that students retain copyright over materials that they post.)

### Conditional Release of Materials

Instructors need to familiarize themselves with those features that allow conditional release of materials within a course. From a technical viewpoint, the main problem in relation to both copyright and FERPA is controlling access to materials. While both Blackboard and WebCT require users to authenticate to the system using a valid pawprint, some instructors allow some form of guest access to their courses (e.g., guest lecturers, observers). However, these guests should not be able to access copyrighted materials or have access to enrolled student information. Access to copyrighted materials should be restricted to enrolled students and TAs. This means that these materials should only be linked or posted to pages to which access can be controlled. When used in E-Res, copyrighted materials should also be password protected.



FERPA requirements are largely fulfilled in Blackboard and WebCT if all areas in which students' work, names, or IDs might be visible are restricted to prevent guest access. This means that Discussion and E-mail tools, Student Homepage tools, Blackboard Groups and WebCT Student Presentation Areas all should be restricted.

If you have questions about how to provide guest access to your course or what features in Blackboard and WebCT can enable FERPA compliance, please visit with our staff.

### Considerations When Using Publisher or Third Party Resources

It has become quite common to read articles in *The Chronicle of Higher Education* or hear news stories about security breaches at colleges and universities around the country. While MU has been fortunate thus far, this is an issue the campus takes very seriously.

One way in which problems of this nature may occur is in the use of third parties to provide services. Examples include book publishers who offer online activities for students, course management software companies, online admissions processing companies, popular "blogging" or discussion board sites, etc. To guard against illegal activity and to protect privacy, it is important that MU use systems and services already approved and available from centrally-supported MU departments or, that we develop contracts that ensure vendors are aware of and responsible for meeting our data privacy requirements.

All applications and services that utilize student records need extra attention to comply with federal law and to protect sensitive information. Please utilize the resources available through IAT Services, the Registrar's office or ET@MO before engaging in such activities (contractual or informal) with a third party for any student related service.

### Tips to Remain Compliant with FERPA Regulations

- Use existing MU services and infrastructure; don't agree to have your student data (names, grades, discussion boards, student projects, etc.) stored outside of MU's control
- Talk with IAT Services and ET@MO about specific needs you have which are not currently available and/or supported by MU
- Protect your students' privacy; don't share information about students with a third party
- Keep your electronic devices (laptops, desktops, servers, PDA's, etc.) secure, don't leave devices where they could be stolen and hacked off site.
- Keep your own PawPrint password safe; don't share it with peers or TA's
- Consult with MU Administrative Services regarding contracts that involve sensitive FERPA-related information

### Online FERPA Resources

- o ET@MO has developed an extensive handout available at: <http://etatmo.missouri.edu/toolbox/doonline/ferpaconcerns.htm>
- o Information on FERPA as implemented at MU is available at: <http://registrar.missouri.edu>
- o Family Educational Rights and Privacy Act (FERPA) is available at: <http://www.ed.gov/offices/OII/fpc/ferpa>