

107TH CONGRESS  
1ST SESSION

# H. R. 2100

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2001

Mr. BOUCHER (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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. SHORT TITLE.**

4 This Act may be cited as the “Twenty-First Century  
5 Distance Learning Enhancement Act”.

1 **SEC. 2. EDUCATIONAL USE COPYRIGHT EXEMPTION.**

2 (a) EXEMPTION OF CERTAIN PERFORMANCES AND  
3 DISPLAYS FOR EDUCATIONAL USES.—Section 110 of title  
4 17, United States Code, is amended—

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

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

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

1 governmental body, an accredited nonprofit  
2 educational institution, or a nonprofit library;

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, in the ordinary course of  
5 their operations, prevent—

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

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

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

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

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

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

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

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

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

1           “For purposes of paragraph (2), no govern-  
2           mental body, accredited nonprofit educational insti-  
3           tution, or nonprofit library shall be liable for in-  
4           fringement by reason of the transient or temporary  
5           storage of material carried out through the auto-  
6           matic technical process of a digital transmission of  
7           the performance or display of that material as au-  
8           thorized under paragraph (2). No such material  
9           stored on the system or network controlled or oper-  
10          ated by the transmitting body or institution under  
11          this paragraph shall be maintained on such system  
12          or network in a manner ordinarily accessible to any-  
13          one other than anticipated recipients. No such copy  
14          shall be maintained on the system or network in a  
15          manner ordinarily accessible to such anticipated re-  
16          cipients for a longer period than is reasonably nec-  
17          essary to facilitate the transmissions for which it  
18          was made.”.

19          (b) EPHEMERAL RECORDINGS.—

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

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

24                         (B) by inserting after subsection (e) the  
25                         following:

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, nonprofit educational institution, or non-  
5 profit library entitled under section 110(2) to transmit a  
6 performance or display to make copies or phonorecords of  
7 a work that is in digital form and, solely to the extent  
8 permitted in paragraph (2), of a work that is in analog  
9 form, embodying the performance or display to be used  
10 for making transmissions authorized under section  
11 110(2), if—

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

17           “(B) such copies or phonorecords are used sole-  
18 ly for transmissions authorized under section  
19 110(2).

20       “(2) This subsection does not authorize the conver-  
21 sion of print or other analog versions of works into digital  
22 formats, except that such conversion is permitted here-  
23 under, only with respect to the amount of such works au-  
24 thorized to be performed or displayed under section  
25 110(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)”.

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