

June 23, 2000

David O. Carson  
General Counsel  
Copyright Office, LM-403  
James Madison Memorial Building  
101 Independence Avenue, SE  
Washington, D.C. 20540

Ref: Post-Hearing Comments;  
Docket No. RM 99-7B

Dear Mr. Carson:

These comments are filed by the United States Catholic Conference (“USCC”) and the National Association of Independent Schools (“NAIS”) in response to the Copyright Office’s Notice of Inquiry in Docket 99-7B, originally released on November 24, 1999 . In that Notice, the Copyright Office sought comments, testimony, and responses to that testimony in order to develop recommendations as to whether there are classes of works which would be adversely affected if not exempted from the prohibition against circumvention of technological measures that control access to copyrighted works set forth in 17 U.S.C. §1201(a)(1)(A) (“anti-circumvention provision”).

USCC is a nonprofit corporation whose members are the active Roman Catholic Bishops of the United States. Through the USCC, the Bishops speak cooperatively and collegially in the field of public affairs, advocating and promoting the pastoral teachings of the Church in such areas as education, social justice, and communications. While USCC does not itself operate schools, it works to ensure creation of public policy which promotes the best educational opportunities for students attending Catholic and nonCatholic schools. More than 2.6 million children of all faiths attend elementary, middle and secondary schools operated by Catholic dioceses (separate corporate entities operated by a Bishop).

NAIS is a voluntary membership organization of over 1,100 private, independent, elementary and secondary schools and associations in the United States and abroad. NAIS represents approximately 473,000 students, 48,000 teachers and instructional support personnel, and 10,000 administrators.

USCC and NAIS support the testimony of Peter Jaszi on behalf of the Digital Future Coalition and the various speakers from the library community. Specifically, USCC and NAIS believe there must be a broad fair use exemption to the anti-circumvention provision for digital copyrighted works to preserve the balance between the rights of copyright owners and the users of their works established in copyright law. Schools and libraries make fair use of copyrighted materials in order to fulfill their educational missions

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The WIPO treaty, which brought about the passage of section 1201, specifically recognized “the need to maintain the balance between the rights of authors and the larger public interest, particularly education, research and access to information...” That balance has been the hallmark of copyright law in the United States, and is incorporated in section 1201(c): “[n]othing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.” 17 U.S.C. §1201(c)(1). A broad exemption from the anti-circumvention prohibition of digital copyrighted works (which cannot be found in nondigital form) is necessary to effectuate section 1201(c) and preserve fair use.

The trend by content owners towards blocking access to copyrighted works in digital form and conditioning use of such works on payment is particularly harmful to schools and libraries. Schools and libraries have limited budgets and resources and, therefore, are particularly vulnerable to limitations on access, which are likely to include pay-to-view requirements. “As it stands, section 1201(a)(1)...provides content owners with the legal infrastructure required to implement a ubiquitous system of ‘pay-per-use’ electronic information commerce .... Technologies now exist that permit information proprietors to continue to regulate ‘access’ to digitalized copies of content after those copies have been lawfully acquired by others.”  
Testimony of Peter Jaszi.

Given their budget restrictions, schools and libraries are only beginning to make use of computer technology and digital materials. The Administration has recognized this and pledged to bridge this ‘digital divide’ through teacher training, tax incentives to encourage private sector sponsorship of community technology centers and training particularly in low income and rural areas (areas served by schools and libraries). The Federal Communications Commission, authorized by Congress in section 254(h) of the 1996 Telecommunications Act, encourages use of school and library use of computers and digital materials through its e-rate discount program. This massive, ongoing effort to spur use of computers by libraries and schools is useless unless copyrighted material distributed by computer is available for use by libraries and schools. The exemption urged by USCC and NAIS is necessary to prevent schools and libraries from finding themselves on the wrong side of the digital divide.

NAIS and USCC urge the Copyright Office to enhance the ability of schools to gain access lawfully to information for educational purposes by establishing a fair use exemption for digital material.

Respectfully submitted,

/s/

Peter D. Relic  
President  
NAIS

/s/

Fr. William Davis  
Assistant Secretary for Catholic  
School and Public Policy, USCC