

US Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000
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Submitted by:

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Class of works proposed for exemption: All audiovisual works and sound recordings “used in face-to-face classroom teaching by college and university faculty, regardless of discipline or subject taught”^{*} and regardless of the source of the legally acquired item.

To Whom It May Concern:

“This is in response to the current call for comment regarding exemptions of works from the DMCA [Digital Millennium Copyright Act] (§1201(a) (1) Title 17) prohibition against circumvention of technological measures controlling access to copyrighted works. The following comments represent the collective input of”^{*} the media resources director and faculty members from Middle Tennessee State University. “Comments were solicited from [the University’s faculty], and individual contributors and signatories to this document are indicated below.”^{*}

In making its decision, the Librarian of Congress is to look at five factors set forth in §1201(a)(1) (C). As to factors (i) and (ii), regarding the availability for use of copyrighted works, the DMCA exemption’s limitation of materials to those in the ‘educational library of a college or university’s film or media studies department’ does not take into account that MTSU’s media library is the primary source of video works for all departments on campus. Additionally, most academic departments have collections of legally-acquired audiovisual works that are not part of any of the university’s libraries. “It is also not uncommon for university faculty to use personal collections of purchased [audiovisual works and sound recordings] in their teaching.”^{*} Public libraries are also sources of legally acquired audiovisual works and sound recordings used for education and teaching in college and university classrooms. Audiovisual works and sound recordings are frequently available in the market for a limited time, often less than 5 years, thereby limiting the amount of time libraries, departments, and individuals have the opportunity to purchase audiovisual works and sound recordings. Typically, university libraries, departmental libraries, and individual faculty purchase few duplicate titles across their collections. Including all these sources of legally acquired audiovisual works and sound recordings in the exemption expands and strengthens the knowledge base from which faculty may bring ideas to the classroom.

Factor (iii) addresses the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research. “Since the rise of home video recording in the mid-1970’s, educators have regularly relied on the [application of] fair use criteria in Section 107 to extract segments from legally acquired [audiovisual works and sound recordings], and have used these clips in face-to-face classroom teaching under the provisions of Section 110 of the copyright law.”^{*} The TEACH Act offers the same opportunity to faculty

to use excerpted material in on-line classes. “The ability to excerpt a limited number of short clips from copyrighted [audiovisual works and sound recordings] enables faculty to focus on the most apposite sequences and images in one or several [audiovisual works or sound recording]s without having to resort to time-wasting shuffling of discs [or tapes] and cumbersome searching for content. [Application of fair use guidelines] also has allowed these segments to be incorporated effectively into new teaching tools, and to be used in creative and transformative ways within the context of teaching and learning. The development of encrypted ... technologies and, particularly, the circumvention proscriptions of DMCA have severely limited these capabilities for the majority of educators.”*

Regarding factor (iv), the effect of circumvention of technological measures on the market for or value of copyrighted works, MTSU is confident that there will be no negative impact. Faculty and students do not engage in conduct that would make the encrypted works illegally available to the public. Rather, the use will be contained in MTSU’s education settings, and the works will not be released to the marketplace. If there is any market impact, it can be argued that it will be no worse than neutral because faculty and libraries will acquire encrypted works that would not have been purchased prior to expanding the exemption. Incidentally, students often become sufficiently interested in audiovisual works and sound recordings from which excerpts are used in class to pursue acquiring whole works in the marketplace.

As faculty members who are committed to educating students with the best information in the most effective manner, “we are concerned by the [narrow scope and] unrealistic limitation of the 2006 DMCA exemption to ‘Audiovisual works included in the educational library of a college or university’s film or media studies department.’ We feel strongly that the DMCA circumvention exemption as currently written fails to recognize or accommodate the wide-spread uses of [audiovisual works and sound recordings] ...as [foci] of study and [tools] for teaching in nearly every higher education curriculum and discipline. ...We consequently urge that the class of works be expanded to include all legally acquired audiovisual works and sound recordings used in face-to-face and on-line classroom teaching. Additionally, we ask “that the language of the 1201 exemption be broadened to include all faculty, regardless of discipline or subject taught.”*

“The current and upcoming generations of college students are visual generations for whom [all audiovisual works are] natural and preferred learning medi[a].“* Consequently, faculty increasingly find their classes filled with visual and multi-sensory learners. The extraordinary limits imposed on the circumvention exclusion seriously, and unnecessarily, hamper teaching and learning at all levels. (Lisa Pruitt, Ph.D., History) “In order to use audiovisual works and sound recordings efficiently and effectively,”* faculty throughout MTSU need to circumvent encryption on audiovisual works and sound recordings for two primary reasons: first, to incorporate clips or segments of audiovisual works or sound recordings in presentations or other audiovisual media for classroom instruction; second, to separate the audio or video components of audiovisual works in order to engage in creative class exercises that develop student skills in sound and video production and editing, particularly in the departments of Recording Industry and Electronic Media Communication and in courses in the Master of Fine Arts program. Exempting all faculty from liability for circumventing encryption under the DMCA would enhance instruction and promote creative learning for all students, not just film studies students.

Examples of the multi-disciplinary uses of audiovisual works and sound recordings at MTSU that are precluded by the narrow restrictions on circumventing encryption include, but are not limited to:

- Use of 'film' as text and case studies in class by theatre, history, political science, and language faculty to illustrate theories, demonstrate applications, and clarify concepts for students. When able to be used as case studies, excerpts allow faculty to analyze complex situations in a way that relates to students. (Linda Seward, Ph.D., Speech and Theatre)
Not being able to circumvent encryption limits the scope, timeliness, and effectiveness of media as text and case studies that faculty members can bring to students.;
- Use of film clips to illustrate salient points by media studies and culture studies faculty. (Clare Bratten, Ph.D., Electronic Media Communication)
Not being able to circumvent encryption limits the scope, timeliness, and effectiveness of salient points that faculty members can bring to students.
- Use of film to teach social issues, immunology, genetics, physiology, general biology, and graduate seminars. (Amy Jetton, Ph.D., Ryan Otter, Ph.D., Anthony Farone, Ph.D., Biology)
Not being able to circumvent encryption limits the scope, currency, and effectiveness of material that faculty members can bring to students.
- Use of clips to illustrate important concepts in psychology courses. Fictional accounts often portray psychological disorders, and cover such topics as repressed memories (Dexter), amnesia (Fifty First Dates, Memento), and artificial intelligence (I Robot). Faculty ground students' learning by reminding them of these fictional treatments and correct the inevitable misconceptions and misrepresentations contained in mass media treatments of psychological phenomena. Not being able to [circumvent encryption limits a faculty member's ability to] show clips as a point of departure for in-depth discussion of these ideas. (Stephen R. Schmidt, Ph.D., Psychology)
- Excerpting content from audiovisual works for technical and artistic analysis of soundtracks by audio engineering faculty. This activity often requires circumvention of the encryption in order to access the necessary elements of the audiovisual works. (Michael Fleming, Recording Industry)
- In order to provide students with various examples of professionally produced music, film or video media in a manner that encourages dialogue and discussion, it is vital to allow the media to be extracted from its digital source. Having the ability to play examples "back-to-back" or allowing them to be compared by switching back and forth ("A/B") via an open computer application greatly assists the instructor when discussing varying approaches to sound, picture editing and directing, to name a few. Being permitted to extract the media is essential when discussing surround sound mixing, for example, as this information is stored on the digital disc in an encoded format and would require numerous conversion processes, resulting in noticeable sound degradation, if digital extraction were not permitted. The same holds true for the picture element. In conclusion, the analysis and study of commercially released digital media is not confined to those focusing on film studies. Any program that is preparing students for work in the entertainment industry will need to utilize professional examples. By allowing the circumvention of encryption for such courses, instructors and students will spend

less time trying to compile examples into usable formats and more time analyzing and discussing their various attributes. (Matt Foglia, Recording Industry)

- Use of film clips to demonstrate mass media history, e.g. Singin' in the Rain (the transition to sound), Empire of the Air (the early days of radio) and cultural impacts during translation (Ran and Kurosawa's transformation of MacBeth). Other applications include tracing cultural changes in health care and communication. In race, class and gender, film clips provide an invaluable means of demonstrating the subtle effects of racism, sexism, classism, etc. on our cultural portrayals, and how that feeds back into social norms. In health promotion and marketing, excerpts from various works on economic and governmental findings help illuminate the multi-layered approach needed when dealing with issues such as AIDS. (Robert Kalwinsky, Ph.D., Electronic Media Communication)
Not being able to circumvent encryption to enhance teaching in these courses diminishes students' understanding and analysis of issues across time.
- Use of films to talk about representations of women in Africa (i.e. Femmes aux yeux ouverts, Faat Kiné, Madame Brouette) Africa and the West (i.e. Afrique, je te plumerai), and socio-political conflict in Africa (i.e. Lumumba, Rwanda: The War Crimes Tribunal, Hotel Rwanda). As you can see, there is a mixture of documentaries, foreign features and films released in USA. I have a special interest in French-speaking Africa, so film is a useful tool to give students access to a more global view of their world. (Leah Tolbert Lyons, Ph.D., Foreign Languages and Literatures)
Not being able to circumvent encryption to enhance teaching in these courses diminishes students' understanding and analysis of issues across time.
- Use of audiovisual works to illustrate any number of principles and theories in the course Mass Media and American Social Institutions. The Mass Media and National Security course deals, in part, with how Hollywood directly supported government war efforts in World War II, a topic drawing from feature, public service, and training films. The Journalism Law course deals with copyright, libel, and advertising law, all of which are "covered" by Hollywood films. When discussing censorship and prior restraint, Crimson Tide and Top Gun are examples of how the Defense Department treated feature films differently in terms of access to military hardware and locations. (Larry L. Burriss, Ph.D., J.D., Journalism)
Not being able to circumvent encryption to enhance teaching in these courses diminishes students' understanding and analysis of issues across time.
- Use of clips from audiovisual works helps to explain concepts more effectively for photography faculty who teach American Media and Social Institutions, Media Law and Ethics, Photojournalism, Screenwriting, and Visual Journalism. It is one thing to talk about history, it is another thing to show documentary information set in its own time. Visuals show what words describe inadequately. (Christopher Harris, Professor, Electronic Media Communication)
Not being able to circumvent encryption to enhance teaching in these courses diminishes students' understanding and analysis of issues across time.

Since all faculty are not permitted to circumvent the encryption on audiovisual works and sound recordings in order to incorporate those works in classroom instruction, there is a negative impact on the ability of the majority of faculty to teach and engage in criticism and comment related to these works. In this regard, expanding the current circumvention exemption will restore to all faculty the opportunity to apply fair use criteria ...to strengthen

continued ... contact between popular culture and academic discourse. (Stephen R. Schmidt, Ph.D.)

MTSU's College of Mass Communication boasts a successful Department of Recording Industry and Department of Electronic Communication and a Master of Fine Arts Program. Faculty members in these fields teach video and audio production and editing. Unfortunately, it can be argued that these programs do not fall under the existing exemption. There is no justifiable reason why these important programs should not receive the same exemptions to enable their faculty to circumvent encryption of audiovisual works and sound recordings in order to teach video and audio production and editing. Failure to expand the exemption will mean that these programs will continue to be excluded from using audiovisual works and sound recordings to teach fundamental skills. Furthermore, it would be cost prohibitive and result in inferior product if these programs were required to create new audiovisual works and sound recordings just for the purpose of teaching these skills. As a result, an expansion of the exemption is necessary to guarantee effective education.

MTSU concedes that most works its faculty wish to access are available in the marketplace. However, some audiovisual works in analog formats are also encrypted. We request that these works be included in the exemption so that faculty and students may access archival content to enhance education and teaching.

For the reasons outlined above, we request that circumvention exemption be expanded to "include the extraction and use of clips from any legally acquired [audiovisual works and sound recordings] for use in face-to-face classroom teaching"* by all faculty, regardless of discipline taught. [We also offer this request as] "a plea for restoring to [all faculty in] colleges and universities the ability [to apply fair use guidelines to encrypted audiovisual works and sound recordings so they may continue to use the] powerful teaching tools and capabilities available to them before the advent of DMCA."*

We also strongly urge expanding the scope of the exemption to include on-line classes and to extend the termination date well past 2009 as is currently proposed.*

Please do not hesitate to contact me if you require clarification or further information.

* Excerpts are from a joint comment letter being submitted by members of the videolib listserv.

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DMCA Comment Letter
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