

*Before the*  
**U.S. COPYRIGHT OFFICE**  
**LIBRARY OF CONGRESS**

**In the Matter of Exemption to Prohibition on Circumvention  
of Copyright Protection Systems for Access Control Technologies**

**Docket No. RM 2011-7**

**Reply Comment of**

- **Peter Decherney, Associate Professor of Cinema Studies, University of Pennsylvania,**
- **Katherine Sender, Associate Professor, Annenberg School for Communication, University of Pennsylvania,**
- **Michael X. Delli Carpini, Professor and Dean, Annenberg School for Communication, University of Pennsylvania,**
- **International Communication Association,**
- **Society for Cinema and Media Studies, and**
- **American Association of University Professors.**

Joint Educators submit this reply comment in support of the following class of works for which an exemption was proposed:

- *Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty (including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment. Proposed by: Peter Decherney et al. (7G)*

Joint Educators submit this reply comment in response to the following initial comments:

- 4, Submitted by Advanced Access Content System Licensing Administrator (AACSLA)
- 8, Submitted by DVD Copy Control Association (DVD CCA)
- 12, Submitted by AAP, ASMP, BSA, ESA, MPAA, PACA, RIAA (MPAA et al.)

In addition, Joint Educators wish to lend support to the following proposed classes:

- 7B, Proposed by Electronic Frontier Foundation
- 7C, Proposed by Electronic Frontier Foundation
- 7D, Proposed by International Documentary Association et al.
- 7E, Proposed by Mark Berger et al.
- 8, Proposed by Media Education Lab at Harrington School of Communication et al.

## I. Introduction

Since 1998, the DMCA rulemaking process has evolved as a necessary response to the needs of users and their novel applications of technology in a rapidly changing media environment. As the Librarian of Congress has allowed educators and students to exercise fair uses, opposition to the exemptions has fallen precipitously.<sup>1</sup> Nevertheless, the content industries—MPAA et al., AACSLA, and DVD CCA (hereinafter “Industry Commenters”)—still refuse to acknowledge the evolving needs of professors and students in the digital age.

While Industry Commenters “do not oppose in principle the existence of an exemption related to pedagogical and educational uses of motion pictures,”<sup>2</sup> they do wish to limit the exemption and, by extension, limit the educational resources available to college and university faculty and students. And though the Industry Commenters may have the loudest voice in regard to these proceedings, theirs is hardly the only DRM-protected content in the marketplace. The two points of contention are:

- whether the educational exemption should cover students across disciplines, as the 2010 exemption now covers faculty, and
- whether the educational exemption should keep pace with technology and include high definition and digitally distributed video.

Put simply, professors and students across disciplines need access to the greatest wealth of high quality video in order to teach and learn effectively. Joint Educators have provided ample

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<sup>1</sup> Just a few of the predominately creator-based organizations that have given up their opposition to exemptions in the past six years are Pioneer Electronics, the Alliance of Visual Artists, the American Association of University Presses, the Authors Guild, the Directors Guild of America, the Independent Film and Television Alliance, the National Music Publishers Association, the Professional Photographers of America, the Screen Actors Guild, and the Software and Information Industry Association.

<sup>2</sup> Comment of MPAA et al. at 36.

evidence to show that professors and students across disciplines need to be able to work with high quality media formats to perform routine multimedia exercises.<sup>3</sup> Students are also taking a more active role in the classroom than they once did, conducting in-class presentations that contain media examples. Students are asked to adopt a pedagogical role, actively learning through teaching their classmates. Moreover, high definition video is now the standard for most online media outlets, including iTunes, Hulu, Netflix, and even YouTube, and Blu-ray is quickly replacing the diminishing DVD market. Below, Joint Educators respond to some specific issues raised in the initial comments.

## **II. The Changing Nature of Education Mandates an Expansion of the Current Exemption to Include All College and University Students and Professors and High Definition Media**

### **a. New Directions in Teaching and Technology**

The world of higher education and the needs of educators are in constant flux, in terms of both how learning occurs and the challenges of using technology effectively. Evidence demonstrates that since the 2009 Rulemaking, there have been changes in teaching methods and in the media environment that warrant not only a renewal but an expansion of the current exemption.

#### **i. The Evolving Classroom**

Video has become as ubiquitous a medium as print, and technology is quickly making the creation of audiovisual works as easy as putting a pen to paper. In today's digital age, it makes no more sense to criminalize students' and professors' quoting and compiling clips of video for academic illustration and critique than it does to forbid them to quote books, articles, or any other written work.

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<sup>3</sup> Comment of Peter Decherney et al. at 20-24.

As video editing becomes increasingly democratic, professors are engaging more in what educational scholars refer to as the “inverted classroom.”<sup>4</sup> Among other elements of the inverted classroom, students are expected to do class-related work using multimedia techniques, especially illustrative video. In addition, students are effectively becoming teachers for large portions of the class, resulting in a more active, participatory learning style.<sup>5</sup> As students take on more pedagogical roles in the classroom, they must also shoulder the same burdens as professors, and for these reasons, they are likewise deserving of the exemption.

## **ii. The Evolving Formats**

Without a renewal and expansion of the current exemption, students and professors stand to be left behind technologically. Students and professors wishing to make legitimate educational fair uses of audiovisual works increasingly find themselves in situations where their own personal collection consists mainly of protected Blu-ray and digitally distributed works that they cannot legally use effectively in their projects. Not unlike DVD and Blu-ray, streaming and downloadable media are predominantly protected by encryption systems that cause actual harm to professors and students by impeding fair uses. Most popular sources of video on the Internet today use flash video, the standard for which includes RTMPE or RTMPS encryption methods and SWF verification; other downloadable and streaming formats, such as MPEG, MPG4, AVI, and WMV, all contain their own encryption methods, the most robust of which is Windows Media DRM. While Apple lifted its FairPlay DRM restriction system from iTunes music recordings in 2009, the company—like all other commercial video retailers—still employs encryption for movies, books, and television programs. If students and professors are to make

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<sup>4</sup> See Dan Berrett, *How ‘Flipping’ the Classroom Can Improve the Traditional Lecture*, Chron. Higher Educ., Feb. 19, 2012.

<sup>5</sup> Comment of Peter Decherney et al. at 21-22.

transformative uses of the material, they must be granted an exemption that allows them to circumvent the encryption on streaming and downloadable media for these purposes.

**b. The Insufficiency of Alternatives**

Industry Commenters propose alternatives to circumvention that do not provide sufficient means to alleviate the harm suffered by college and university professors and students. Educators need to manipulate clips and integrate them into presentations for comparison, demonstration, and other educational purposes. The meager selection, poor quality video, and/or limited clipping technology of every proposed alternative fails to meet these needs.

**i. Clip Websites are Insufficient Due to Limited Content, Availability, and Quality**

The content on clip websites such as AnyClip.com and MovieClips.com is limited in a number of ways. First, the content is limited to the narrow class of narrative feature films licensed to the website; the content also does not encompass the vast array of other audiovisual works such as television programs, documentaries, and short films.<sup>6</sup> Indeed, AnyClip.com does not contain a single clip of the works Joint Educators referenced in our initial proposal.<sup>7</sup> Meanwhile, MovieClips.com contains an “about” video in which the founders and employees lay out a 20-second laundry list of rules and limitations they must implement pursuant to their

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<sup>6</sup> For example, MovieClips.com touts “over 12,000 movie clips” available on its website of predominantly 30 seconds to 2 minutes each (<http://movieclips.com/about/team/>). The Internet Movie Database alone catalogs over 270,000 titles in feature films, excluding television shows, short films, and other video titles (<http://imdb.com/stats>). Assuming quite conservatively that each feature film is the SAG minimum of 80 minutes long and that the clips included are 2 minutes, MovieClips.com includes roughly 0.1% of the feature film content that has been produced, and possibly a much smaller number given the amount of more than 80 minute films and less than even 45-second clips on the website.

<sup>7</sup> None of the films previously mentioned in our initial proposal, including *Zoolander*, *Fistful of Dollars*, *Yojimbo*, or *Man with a Movie Camera*, can be found on the AnyClip.com website. (<http://www.anyclip.com/>) (last visited Feb. 27, 2012). Additionally, none of the films (*Film Socialisme*, *I Am Furious Yellow*, and *All That Heaven Allows*) mentioned in Christopher Pavsek’s comment in support of our proposed class were available.

licensing agreements, all of which detract from the range of choices available to professors and students in pursuit of their fair uses.<sup>8</sup> Options are further diminished as website administrators select beginning and ending points of available clips. If a user is even able to find the media he or she desires, the scenes may be split up into two separate clips with a page load, buffer, and possibly an advertisement in between.<sup>9</sup> Clips may even stop in the middle of scenes due to the length limitations.<sup>10</sup> Users may be further crippled by daily viewing limits and geographic restrictions, as evidenced in Exhibits 1 and 2, and are subject to an array of advertisements and other distractions, as evidenced in Exhibits 3-5.<sup>11</sup> Additionally, clips on AnyClip.com are edited for adult content, forcing professors and students to choose from a very limited selection of bowdlerized clips.<sup>12</sup>

Furthermore, the limited number of clips available on these websites is unreliable for classroom use. When multiple clips need to be shown, they must first be pre-loaded in separate web browser windows, a process that requires both bandwidth and computing power. As the Register has noted in the past, classroom delays in shuffling between clips are an actual harm.<sup>13</sup> Additionally, users may still be subject to interruption from advertisements. The bandwidth requirements are not simply on the receiving end, as demonstrated by an attempt to view clips at

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<sup>8</sup> See “The Movie Genome Project,” <http://movieclips.com/RoL2-movieclips-movie-the-movie-genome-project/> (last visited Mar. 1, 2012) (discussing restrictions based on actors, music, corporate logos, and partial nudity).

<sup>9</sup> For instance, Sam Elliott’s 2:54 monologue at the beginning of *The Big Lebowski* is divided between two clips at 1:07 (clips included “The One Called the Dude” and “Sometimes There’s a Man.”) See <http://www.anyclip.com/movies/the-big-lebowski/> (last visited Mar. 1, 2012). During our viewing, a 35-second (including lag time) advertisement for “Copper Mountain” preceded the second clip. See Appendix A, Exhibit 4.

<sup>10</sup> “Why do some clips stop in the middle of the scene? Our agreement with the studios allows us to show clips of up to two minutes at a time.” AnyClip.com FAQ, <http://www.anyclip.com/pages/faq/> (last visited Mar. 1, 2012).

<sup>11</sup> See Appendix A.

<sup>12</sup> See AnyClip.com FAQ, <http://www.anyclip.com/pages/faq/> (last visited Mar. 1, 2012).

<sup>13</sup> Recommendation of the Register of Copyrights (June 11, 2010) at 25-26.

AnyClip.com on February 20<sup>th</sup>. Despite a 30Mb/s dedicated fiber-optic connection, a 3.74Ghz quad-core desktop computer with 8GB RAM at 1760Mhz, an Nvidia GTX 280 graphics card, and a 1GB/s wired Ethernet connection, clips failed to load past the “[b]uffering” screen due to a bandwidth error from the server side. Students and professors simply cannot postpone a lesson due to faltering technology, and they should not be forced to do so when the fault is not on their end.

**ii. AACCS’ “Managed Copy” Technology is Insufficient Due to Limitations in the Standard and Unavailability in the Marketplace**

“Managed Copy” technology is unusable due to the complete lack of software, hardware, and authorization servers, all of which would be required for it to function. In seven years of the AACCS standard of Blu-ray and HD-DVD encryption, there is no evidence to show that Managed Copy is or will become available to end-users in the marketplace. The AACCS website itself makes little mention of the technology, and the “News” and “Press” sections of the AACCS LA website have not been updated since 2007.<sup>14</sup> As of February 2012, Managed Copy is being dismissively described as “DOA.”<sup>15</sup> Searches of Amazon.com, Newegg.com, Google Shopping, Best Buy, HH Gregg, Radio Shack, Fry’s.com, CompUSA, Tiger Direct, and Buy.com for Blu-ray players, drives, and burners with Managed Copy technology return no relevant results.<sup>16</sup> Even expensive high-end Blu-ray duplicators do not have the technology; ProDuplicator’s

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<sup>14</sup> AACCS LA Website, <http://www.aacsla.com/news/>, <http://www.aacsla.com/press/> (last visited Feb. 26, 2012).

<sup>15</sup> Ben Drawbaugh, “Latest Kaleidescape tentative judgment could mean the end of untethered disc servers,” Engadget (Feb. 2, 2012), <http://www.engadget.com/2012/02/02/latest-kaleidescape-tentative-judgement-could-mean-the-end-of-un/>.

<sup>16</sup> As of Feb. 21, 2012.

product pages clearly read, “[t]his machine does not burn any copy protected BDs, DVDs, or CDs.”<sup>17</sup> An “alternative” that cannot be obtained or used is not a real alternative.

**iii. Screen Capture and Smartphone Video are Insufficient Due to Diminished Quality**

Screen capture software is no more a viable alternative than it was at the time of the 2009 rulemaking.<sup>18</sup> Smartphones, despite significant advances, still pale in comparison to camcorders for recording live action and, more importantly, for recording video being displayed. Even high-end camcorders have likewise been shown to produce distinctly flawed results in recording displayed video<sup>19</sup> and are not an alternative to decryption.<sup>20</sup> Further, Industry Commenters’ repeated unwillingness to comment on whether screen capture is legal<sup>21</sup> leaves great uncertainty in the minds of users. A proposed alternative that leaves the door open for future claims of an anticircumvention violation is not a real alternative.

**iv. Licensing Agreements are Unavailable, Unlikely, and Do Not Address the Problem of Anticircumvention**

License agreements proposed by Industry Commenters fail to be a viable alternative to decryption. In a diverse media environment, it is difficult to track down copyright holders, and it is unlikely that appropriately robust licenses and expedition licensing practices will ever be

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<sup>17</sup> ProDuplicator Blu-ray CD DVD Duplicator 10x SATA Burner 1 Target + USB Interface, <http://www.produplicator.com/blu-ray-dvd-cd-duplicator-standalone-tower-1-drive-hard-drive.html> (last visited Mar. 1, 2012).

<sup>18</sup> Recommendation of the Register of Copyrights at 28-29, 60-62; *see* Comment of Peter Decherney et al. at 19-20.

<sup>19</sup> Reply Comments of Peter Decherney et al. (2006) at 7.

<sup>20</sup> Recommendation of the Register of Copyrights at 60 (“If a motion picture is camcordered from the screen, a technically degraded reproduction is the result.”).

<sup>21</sup> *Id.* at 28 (“The line of questions posed to the opponents of the proposed classes related to whether or not video capture software violated the prohibition on circumvention. At both hearings, opponents of the classes were unwilling to provide a definitive answer to this question.”); Comment of MPAA et al. at 38 (“[Industry Commenters] take no position generally on whether any specific screen capture technologies, or any particular uses of those technologies, are lawful . . .”).



adopted by the millions of distinct video copyright holders. Even simple clip websites fail to offer more than a token number of “licensable” clips, and blanket institutional licenses remain a distant hypothetical. MovieClips.com offers item-by-item licensing on barely over twelve percent<sup>22</sup> of clips through Rightsline.com, for use during a limited time period, depriving users of both educationally meaningful choice and the ability to rely on the continued availability of material.<sup>23</sup> Further, as courts have stated, licenses do not necessarily preclude transformative fair use.<sup>24</sup>

Blanket (or institutional) licenses for educational use over large bodies of material do not currently exist, and there has been no visible progress toward their development.<sup>25</sup> Before drafting can begin, one must determine who in fact has the authority to give such a license, a question with an inherently different answer for each work and over which there has been no concord even in a broad sense. Even assuming that a majority of the vast array of content providers could settle on common terms, the agreed upon cost of such a license entitling all

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<sup>22</sup> “Licensable Clips,” <http://movieclips.com/94mw-licensable-clips-editors-choice-videos/#p=98> (last visited Mar. 1, 2012) (providing licenses for only 1,463 of MovieClip.com’s already insufficient collection of over 12,000 clips).

<sup>23</sup> The clip may be downloaded after reaching agreement and payment has been completed. *Id.*; “Clearance Services,” <http://rightsline.com/Clearance.aspx> (last visited Mar. 1, 2012) (Peter Decherney et al., are still awaiting reply from such a request made on Feb. 27, 2012).

<sup>24</sup> *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 615 (2d Cir. 2006) (“In a case such as this, a copyright holder cannot prevent others from entering fair use markets merely ‘by developing or licensing a market for parody, news reporting, educational or other transformative uses of its own creative work.’”) (internal citation omitted).

<sup>25</sup> The Motion Picture Licensing Corporation, the “leader in motion picture copyright compliance,” was created over 20 years ago with collaboration from motion picture studio executives and the MPAA, and represents “over 400 producers and distributors from major Hollywood studios to independent and foreign producers.” See “About the MPLC,” <http://www.mplc.org/page/about-the-mplc> (last visited Mar. 1, 2012). They do not offer a version of their blanket “Umbrella License” including decryption rights for classroom uses, and in fact “[their] license has nothing to do with that.” The seasoned organization offers nothing similar, and “[h]as no idea” of anyone who would. Telephone conversation with Nick, MPLC (Mar. 1, 2012).

professors and students to use works for educational purposes would likely be well outside the budget of even the most prosperous of colleges and universities. No doubt, a large number of films outside the control of the mainstream content producers would not be encompassed in such a license, and would still require circumvention.

Further, the right to use conveyed by such a license does not preclude the criminal prohibition on circumvention of DRM measures. Unless content providers agreed to then provide entire collections of materials in non-standard or raw formats (an extremely costly,<sup>26</sup> if not insurmountable, task), circumvention would still be required in order to actually obtain the materials being licensed. Absent a congressional adaptation of Section 1201, blanket institutional licenses in any fathomable form fail to address the very problem Industry Commenters have posited them to address and are not by any means an alternative to circumvention.

Finally, it is difficult or impossible for teachers and students to seek licenses that would allow them to decrypt and access audiovisual works of their own selections. Such requests are, for understandable reasons, not a high priority with large content-owning companies, and their fulfillment is unlikely to occur while the educational purpose in question remains relevant. Moreover, it is far from clear *who* would be authorized to grant such a license, as between the copyright owner and the standard setting organization, for the encryption to be circumvented.

### **c. Opponents' Assertions of Lack of Evidence are Misplaced**

Industry Commenters attempt to refute the proposed class by complaining that the initial proposal of the Joint Educators did not provide enough titles of motion pictures; for a variety of reasons, this argument amounts to little more than a distraction. Specifically, DVD CCA claims

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<sup>26</sup> Comments of Time Warner, Inc. (Feb. 2, 2009) (explaining that Time Warner incurred \$150 in lab fees obtaining one clip of one film for one licensee in January 2009). One can hardly fathom the lab costs for providing a studio's entire media collection to an institution.

that it is impossible to evaluate whether circumvention of CSS was necessary without specific DVD titles.<sup>27</sup> They ignore the fact that the initial proposal detailed a number of substantive examples across many academic fields, documenting the need for circumvention and educational harm that occurs when high quality digital clips cannot be employed. The initial proposal discussed University of Pennsylvania Medievalist David Wallace's use of the film *Zoolander* to compare medieval and modern theories of performance; it discussed University of Michigan Law Professor Jessica Litman's use of the films *Rear Window* and *Disturbia* to discuss the case of *Abend Revocable Trust v. Spielberg*; it discussed Yale Slavic Studies Professor John MacCay's use of *Man With a Movie Camera* to teach Soviet theories of art, politics, and psychology.

One revealing example not included in the initial comment was relayed by Andy Lamas, a professor of Urban Studies and Economic Development at the University of Pennsylvania. Professor Lamas regularly uses a range of films and film related assignments in his teaching. In one assignment, he has students compare clips of Charles Chaplin's *Modern Times* with films by the California Newsreel collective to examine how the films represent labor practices. Although the course is on Community Economic Development, aesthetics are the focus of the discussion and high quality images are crucial. Students look at the techniques simulating surveillance cameras in the Chaplin film and compare them with the social realist style of California Newsreel. The analytic exercise prepares students to go out and create their own video essays on work and labor. "Years ago," Professor Lamas explains, he "used to have students practice writing op-ed pieces." It is important for students to learn to communicate in a variety of genres and forms. Today, video is one of the most important media for social advocates to master, and

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<sup>27</sup> See Comment of DVD CCA at 42. Moreover, it is odd that DVD CCA raises this point, given that if there were no encryption, then by definition no decryption would have occurred.

as a result they must be able to work with high quality images. The study and analysis of high quality media images is the first step.

### **III. Support of Other Comments**

Joint Educators offer support to other classes of exempted works proposed by use communities that share in harms faced by college and university faculty and students. The proposed alternatives to circumvention for these classes—most of which are the same as the alternatives proposed for the Joint Educators—are equally unavailable, unworkable, and unsuitable for the desired fair uses.

#### **a. Educational Uses for Kindergarten through Twelfth Grade Educators**

The educational exemption proposed by the Media Education Lab is necessary to alleviate harms that echo those present in higher education. Currently, kindergarten through twelfth grade educators are ill equipped to provide students with meaningful educational lessons that impart analytical capabilities necessary to succeed in higher education. A high school chemistry student, for example, fails to obtain a holistic lesson on crystal structures found in caves when her teacher is limited to a lower quality video that dilutes the images that are the subject of the lesson.<sup>28</sup> Furthermore, opposing comments make no serious contention that such an exemption would lead to abuse of the fair use doctrine.

The effect that technology has on educational methods is hardly limited to the college and university classroom. For the same reasons that the Librarian of Congress saw fit to extend an exemption to college and university professors in 2006 and 2010, the exemption should now encompass kindergarten through twelfth grade educators as well.

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<sup>28</sup> See Comment of Media Education Lab et al. at 5.

## **b. Noncommercial Videos**

The Electronic Frontier Foundation has demonstrated that without an exemption, the anticircumvention provisions prevent noncommercial “vidders” from conducting noninfringing activity. The creation of noncommercial videos has become an integral aspect of our culture as a device for comment and/or criticism, and thanks to the Register’s 2010 recommendation, and efforts by the Electronic Frontier Foundation and others, “vidders” have resources to educate them on how to create videos within the scope of the fair use doctrine.<sup>29</sup> Moreover, the claim made by Industry Commenters that “[t]he risk associated with encouraging people to circumvent and test the limits of fair use is too high”<sup>30</sup> remains wholly unsupported and amounts to mere speculation. Considering that noncommercial vidders’ interests are rooted in cultural enrichment as opposed to economic considerations, Joint Educators strongly support an exemption that will allow noninfringing uses by vidders and other noncommercial video artists.

## **c. Documentary and Fictional Filmmaking**

Petitioners also support the exemption proposed by the International Documentary Association et al., which would allow independent documentary and fictional filmmakers to circumvent access controls in furtherance of legitimate fair uses. It is worth noting that these particular proponents represent copyright owners themselves, and their own proprietary interests are potentially subject to this proposed exemption. Additionally, the fact that proponents earn a living off of their copyright ownership points to an increased awareness of fair use limits and an

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<sup>29</sup> See Electronic Frontier Foundation, “A Guide to YouTube Removals,” <https://www.eff.org/issues/intellectual-property/guide-to-youtube-removals> (last visited Feb. 19, 2012); Electronic Frontier Foundation, “Fair Use Frequently Asked Questions And Answers,” [http://w2.eff.org/IP/eff\\_fair\\_use\\_faq.php](http://w2.eff.org/IP/eff_fair_use_faq.php) (last visited Feb. 19, 2012).

<sup>30</sup> Comment of MPAA et al. at 39.

ability to employ the doctrine responsibly.<sup>31</sup> Again, the Industry Commenters assert, without proof, that the proposed class would encourage activity that cannot qualify as noninfringing.<sup>32</sup>

Filmmakers not only have a variety of resources to consult regarding responsible implementation of the fair use doctrine, but also have many formal procedures in place to ensure proper compliance.<sup>33</sup> Because the proposed class is narrowly drafted and proponents suffer actual harm, Joint Educators support the proposed exemption.

#### **d. E-Books**

E-Book proponents have likewise demonstrated a narrowly tailored class of works particular to a group of users who suffer harm without an exemption. E-book authors are similarly situated to filmmakers insofar as they rely on fair use while also being copyright owners themselves, and are severely hampered in conducting noninfringing uses without an exemption. Just as with college and university professors and students, licensing is often an unrealistic option both financially and practically. Contrary to Industry Commenters' assertion that the licensing process is available,<sup>34</sup> proponents of 7E have pointed to specific instances in which an attempt to license proved inordinately complicated and costly.<sup>35</sup> As proponents argued, e-book authors simply need to make the same fair uses that have been relied upon by book authors; access controls, however, threaten fair uses that throughout history have been integral to literary works across all genres.<sup>36</sup>

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<sup>31</sup> See Comment of Int'l Documentary Ass'n et al. at 2.

<sup>32</sup> See Comment of MPAA et al. at 40.

<sup>33</sup> See Comment of Int'l Documentary Ass'n et al. at 7.

<sup>34</sup> See Comment of MPAA et al. at 42.

<sup>35</sup> See Comment of Mark Berger et al. at 7.

<sup>36</sup> *Id.*

E-book authors, like college and university professors and students, are most intimately acquainted with the increasing necessity for audiovisual works as an accompaniment to print media, and Joint Educators strongly encourage the adoption of proponents' exemption.

#### **IV. Conclusion**

For the foregoing reasons, Joint Educators respectfully request that the two points of contention be answered in the following:

- The educational exemption should cover students across disciplines, as the 2010 exemption now covers faculty, and
- The educational exemption should keep pace with technology and include high definition and digitally distributed video.

Submitted For:  
Peter Decherney  
Associate Professor of Cinema Studies  
University of Pennsylvania  
Cinema Studies Program  
Fisher-Bennett Hall  
University of Pennsylvania  
Philadelphia, PA 19104  
And  
Katherine Sender  
Associate Professor  
Michael X. Delli Carpini, Professor and Dean  
Annenberg School for Communication  
University of Pennsylvania  
Philadelphia, PA 19104  
And  
International Communication Association  
1500 21<sup>st</sup> Street, NW  
Washington, DC 20036  
And  
Society for Cinema and Media Studies  
640 Parrington Oval  
Wallace Old Science Hall, Room 300  
Norman, OK 73019

And  
American Association of University Professors  
1133 Nineteenth Street, NW, Suite 200  
Washington, DC 20036

Submitted By:  
Peter Bodri, Jim Hill, Ashlee Hodge, and Brian Shea  
Student Attorneys  
Glushko-Samuelson Intellectual Property Law Clinic  
Washington College of Law, American University  
4801 Massachusetts Avenue, NW  
Washington, DC 20016



# APPENDIX A – Clip Website Illustrative Examples

## Exhibit 1: AnyClip.com Daily Allowance

anyclip

anyclipsolutions.

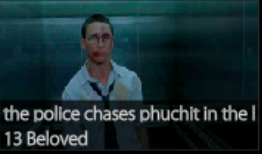
Sign in | Sign up

Movies | New Releases | Playlists | Actors | Directors

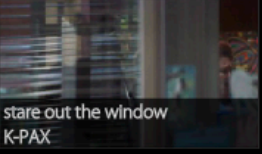
### The Big Lebowski | 1998

Clip Name: Sometimes There's a Man

! Great movie, right? But you can't view more than a few minutes a day. Try again tomorrow or choose another clip now.
More Clips



the police chases phuchit in the 13 Beloved



stare out the window K-PAX

Like it
443 Total Views

Movie Info | Full Cast | Quotes | Music | Locations



### The Big Lebowski | 1998

Starring: Jeff Bridges, John Goodman and Julianne Moore  
Directed by: Joel Coen

NETFLIX Add

iTunes

amazon

**About this movie**

"Dude" Lebowski, mistaken for a millionaire Lebowski, seeks restitution for his ruined rug and enlists his bowling buddies to help get it.

Ford Jeff Bridges John Goodman  
argument bowling bowling alley  
bowling ball bowling pins business  
california car centennial cocktail

The Big Lebowski
SEARCH

**250 Business Cards - \$10**  
Free Shipping. Design your Premium Business Cards Online. All for \$10.  
[www.vistaprint.com](http://www.vistaprint.com)

**Free Online Advertising**  
See What \$75 of Google Ads Can Do For Your Business. Try It Now!  
[www.Google.com/AdWords](http://www.Google.com/AdWords)

**Media Arts Degree**  
The Art Institutes - Get Info on the Independent Film Program.  
[www.ArtInstitutes.edu/York](http://www.ArtInstitutes.edu/York)

**Film Maker**  
Love the film industry? Learn what it takes to be a Film Maker!  
[GetInMedia.com/Film](http://GetInMedia.com/Film)

AdChoices

Recommended Clips

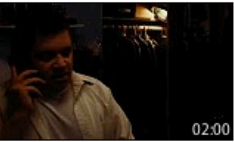



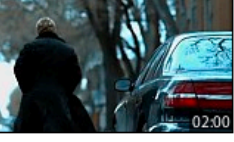
- 
Paul Call to Sport's Dogg Radio Show Goes All Wrong  
**Big Fan**
- 
Paul Life After the Incident  
**Big Fan**
- 
Opening Scene 13 Beloved
- 
Going to See Diana Mask
- 
Laurel Saves Frank You Kill Me

Exhibit 2: AnyClip.com “Not Available in Your Country”

Movies | New Releases | Playlists | Actors | Directors

Refine your search

# White Noise | 2005

Clip Name: Bad People

Oops, this clip can't be played in your country. Try another clip or head to [www.anyclip.com](http://www.anyclip.com).

More Clips

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The Mist
- shona and lea die  
House of 9

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Movie Info | Full Cast | Quotes | Music

White Noise | 2005

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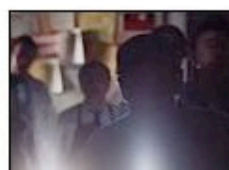
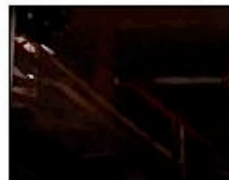


Exhibit 3: AnyClip.com Example Banner Ad

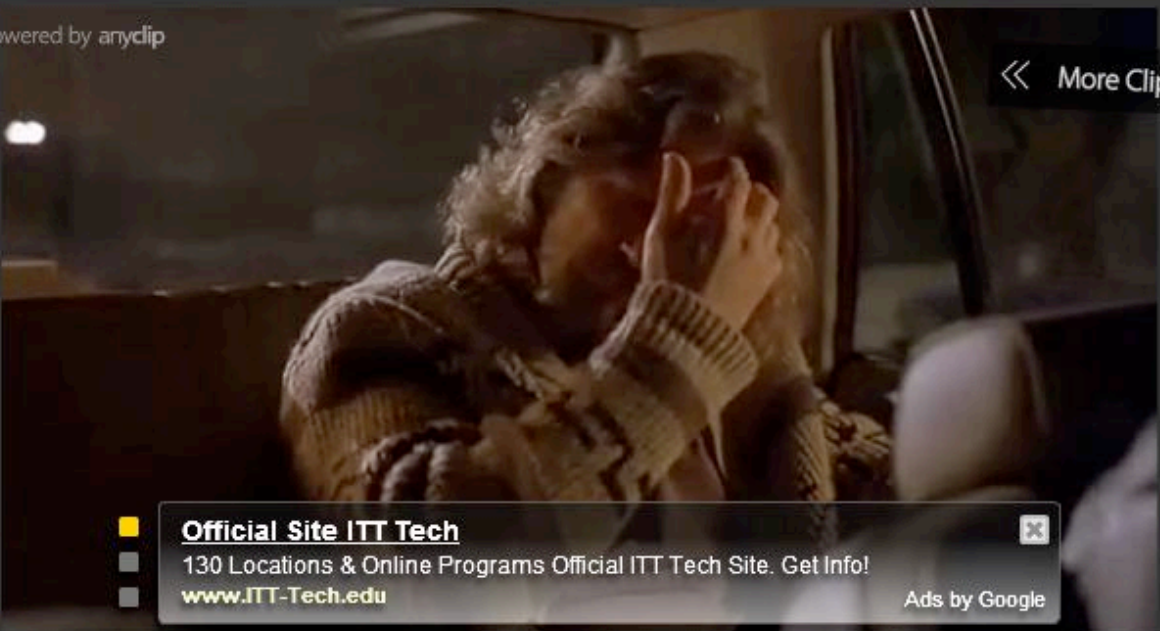
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Movies | New Releases | Playlists | Actors | Directors

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**The Big Lebowski | 1998**  
**Clip Name:** Police Station

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Movie Info | Full Cast | Quotes | Music | Locations



 **The Big Lebowski | 1998** 

Exhibit 4: AnyClip.com Copper Mountain Advertisement Video

Home | New Releases | Tags | Series | Directors

Refine your search

# The Big Lebowski | 1998

**Clip Name:** The One Called the Dude



Like it 224 Total Views

- Movie Info
- Full Cast
- Quotes
- Music
- Locations

A Netflix banner for the movie "The Big Lebowski | 1998". On the left is a small image of the movie's cover. To the right of the image, the text "The Big Lebowski | 1998" is displayed. On the far right, there is a red button with the word "NETFLIX" in white and a smaller red button with the word "Add" in white.

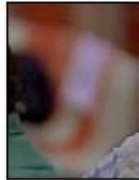
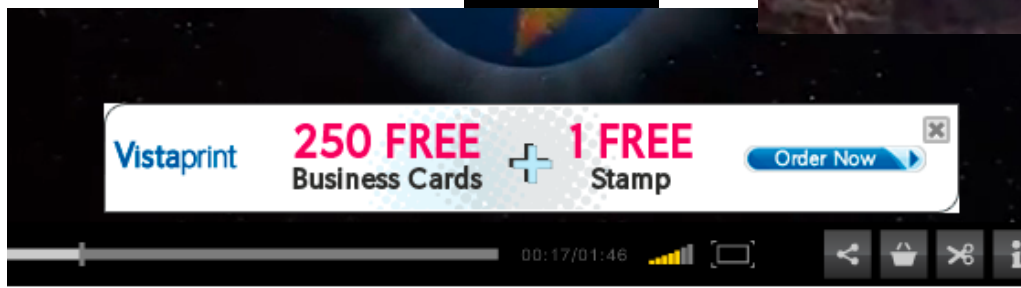
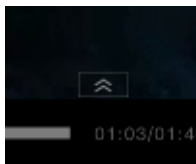
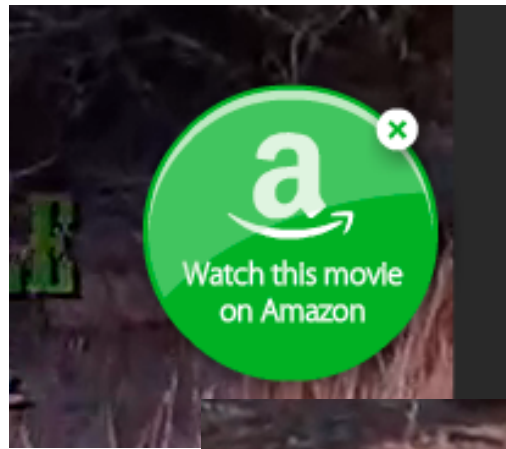
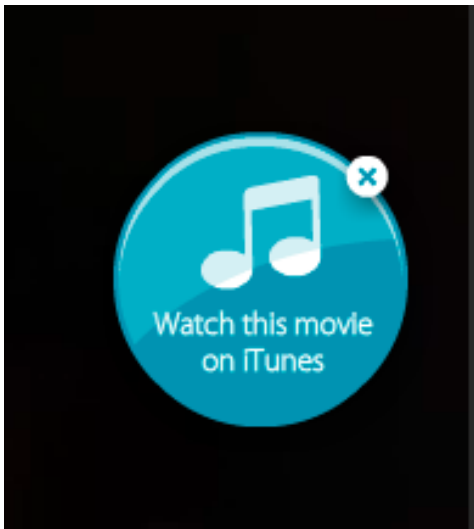
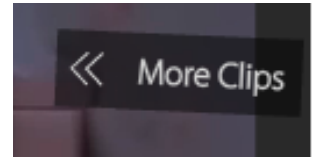
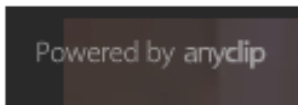


Exhibit 5: AnyClip.com Advertisements and Distractions Shown While Clip is Playing



ke it

216 Total