

March 2, 1999

U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400, Southwest Station
Washington, DC 20024

Attn: Ms. Sayuri Rajapakse
Attorney-Advisor

Ladies and Gentlemen:

I am writing on behalf of John Wiley & Sons, Inc. in connection with the study you are conducting pursuant to the Digital Millennium Copyright Act. I want to express my concern regarding the prospect of a new statutory exemption from copyright protection for the ostensible purpose of promoting "distance education" through digital technology.

Founded in 1807, John Wiley & Sons, Inc. is America's oldest publisher. Today, we are an independent, global publisher of print and electronic products, specializing in scientific, technical, and medical books and journals, professional and consumer books and subscription services and textbooks and educational materials for colleges and universities.

At Wiley, we are very proud of our, and our authors', contribution to American literature, science, and education over a period of nearly two centuries. Today, an increasing number of our products are produced in electronic format, and we are beginning to develop electronic products specifically designed for use outside of the traditional classroom - sometimes referred to as "distance education."

The question should not be, as some have put it, whether a statutory exemption is needed to promote the use of digital technology for such purposes, but rather whether such an exemption would instead hinder such development. The development of educational material has always involved risk and capital - increasingly so in the case of digital materials. Companies such as Wiley are providing both substantial financial investment and the benefit of their expertise in developing such materials. Our authors provide the intellectual capital. Nearly all of our authors of such materials are, or have been, faculty members at educational institutions, and increasingly these institutions themselves are becoming our partners in the product development process.

Far from being an impediment to the development and dissemination of new kinds of educational materials, copyright has proven, over a long period of time, to be a solid and effective foundation for the large investment that will be needed to realize the potential for digital technologies in distance education. Copyright has adapted to, promoted investment in, and

helped insure the wide dissemination of a number of new technologies - radio, sound recording, motion pictures, television and computer software. I cannot improve on the words of Abraham Lincoln who, in a lecture delivered at Illinois College in 1859, described the concept of intellectual property as having “added the fuel of interest to the fire of genius, in the discovery and production of new and useful things.” (He was talking about patents, but the words apply equally to copyright). Over the years, private enterprise has contributed enormously to a robust and diverse market for educational materials. The evidence indicates that this is working as well in the digital world as it has in the past for printed materials.

We recognize that educators will need to distribute or transmit materials electronically in connection with distance education. We believe that this can best be addressed through the application of traditional fair use concepts (along the lines of the draft Distance Learning Guidelines discussed during the Conference on Fair Use sponsored by the Department of Commerce and concluded in November, 1998), and through licenses. In a competitive marketplace, commercial licensing practices will reflect the needs of our customers, including both educators and students. As an example, licenses for the electronic version of our scientific and technical journals, called “Wiley InterScience,” offer to subscribing academic institutions the opportunity to digitally store materials from these journals for use in course materials, or “electronic reserve rooms.” Both the fair use doctrine embodied in Section 107 of the Copyright Act, and licensing, are flexible and adaptable mechanisms, better suited to rapidly evolving technologies and marketplaces than a statutory exemption.

Finally, I would like to dispel any notion that “distance education” is a narrow and limited concept which, for purposes of copyright protection, should be treated differently from educational materials generally. One of the benefits which digital technology will provide is to unfetter educational institutions from the physical constraints of the classroom. Teaching activity will increasingly involve synchronous and asynchronous access to educational materials through digital networks.

For all of these reasons, we believe that legislation to establish an exemption from copyright for distance education would hinder, rather than promote, the development of new materials specifically for this purpose, as well as for educational materials generally. This outcome would not only be detrimental to publishers and authors, but to educators and students as well.

I want to thank the Copyright Office for the opportunity to express our views on a subject so vital to our industry, to our authors, and to the customers we serve.

Sincerely,