



Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

Check here if multimedia evidence is being provided in connection with this comment.

ITEM A. COMMENTER INFORMATION

Allison A. Cooper
Director, Kinolab
Associate Professor of Romance Languages and Literatures
Bowdoin College

ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 3(a) Motion Pictures: Text and Data Mining

ITEM C. OVERVIEW

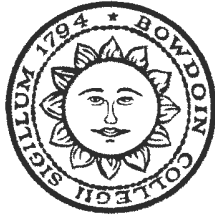
Please see letter below.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGEMENT USES

Privacy Act Advisory Statement: Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.



18 March 2024

This letter provides additional context regarding research activities carried out by Kinolab, which is a digital humanities laboratory for the analysis of narrative film and television that I created at Bowdoin College. As Kinolab's director, I am in support of Authors Alliance's petition to the Copyright Office for exemptions to §1201. The information I share below is intended to clarify the ways in which research at Kinolab utilizes existing exemptions to the DMCA. The views I offer reflect my own experience as a director of a DH laboratory and a researcher with expertise in the analysis of narrative film and television: they are not made on behalf of any organization.

Kinolab's research objective is to understand film language as a system of communication. Our efforts build upon those of previous generations of filmmakers and theorists, from early Soviet filmmaker Sergei Eisenstein's notion of a 'film grammar' to French film theorist Christian Metz's efforts to bring a semiotic model to bear on film language analysis in the mid twentieth century. Kinolab's distinctive contribution to this corpus of research is our application of digital humanities methodologies to research film language *in the digital*.¹ Our platform at Kinolab.org was developed to support the inductive analysis of film language, allowing us to identify and analyze the components of film language across a broad array of films and television series in order to generate a controlled vocabulary that can eventually serve as the basis for a more sophisticated film language data model. The platform enables key research activities that support this objective, including corpus building (the collection of motion picture clips), close viewing and analysis of clips, clip annotation, and digitally assisted techniques for pattern search and identification at different scales.

One example of analysis provided by Kinolab is a clip titled "A Dinner with Mr. Chan and Mrs. Chow"² from Wong Kar-wai's *In the Mood for Love* (2000) that examines cinema's 180-degree rule, which ensures visual continuity by maintaining the camera's position on one side

¹ For additional background on Kinolab, please see the following publications: Allison Cooper, "Collaborative Film Language Analysis in the Networked Information Era," *The Italianist Film Issue* 41, no. 2 (2021): 175-184, <https://doi.org/10.1080/02614340.2021.1992098>; Allison Cooper, Fernando Nascimento, and David Francis, "Exploring Film Language with a Digital Analysis Tool: the Case of Kinolab," *Digital Humanities Quarterly* 15, no. 1 (2021): <http://www.digitalhumanities.org/dhq/vol/15/1/000515/000515.html>; and Allison Cooper, "Kinolab: A Digital Humanities Project for the Collection and Analysis of Film," *Italian Culture* 37, no. 2 (2019): 137-143, <https://doi.org/10.1080/02614340.2021.1992098>.

² "A Dinner with Mr. Chan and Mrs. Chow" in *In the Mood for Love*. Directed by Wong Kar-wai, Block 2 Pictures, 2000, *Kinolab*, <https://kinolab.org/FilmClip.php?id=1733>.

of an imaginary line. The significant violations of the 180-degree rule in the clip create discontinuities in the protagonists' onscreen positions, visually symbolizing their assumption and rejection of roles in a complex game of playacting that provides cover for the romantic feelings they are developing for each other. The clip has been annotated, therefore, with "180-degree rule,"³ among many other film language annotations, allowing Kinolab researchers to analyze it in relation to 51 other film clips and 15 clips from television that also share the same annotation. As the quantity of clips bearing the "180-degree rule" annotation in our corpus increases, so does our ability to ask and answer research questions about the significance of this aspect of film language: Are violations of the 180-degree rule increasing in the 21st century? Is there a correspondence between those violations and the increasing use of a technique like "direct address,"⁴ also known as "breaking the fourth wall," which similarly disrupts verisimilitude? What do broad changes in filmmakers and showrunners' adherence to continuity style, if they are occurring, tell us about contemporary narrative film and television and their audiences? Beyond film language annotations, Kinolab's research team adds information to each clip that inform users of the film's year of release, genre, time period represented, and setting, among other variables. Such categories allow users to search for and identify patterns such as those described above by sorting on our metadata on the platform itself, or by requesting it in a different format for purposes like exploratory data analysis. As our own research progresses, we are gaining a clearer understanding of how other film and media scholars might make use of our metadata, which now includes over 43,000 film language annotations manually added by members of the Kinolab curatorial team of faculty and students. Our goal is to build features into the next iteration of the platform that will enable academic users to import our metadata into existing platforms like Datawrapper or Flourish – browser-based tools for data visualizations such as charts, maps, and tables that allow users to upload their own datasets and select from many different visualization formats. For now, we encourage researchers to contact us directly if they would like access to our metadata, which we make available under a Creative Commons Attribution-Noncommercial 4.0 International License (CC BY-NC). The CC BY-NC license gives users permission to remix, adapt, and build upon our work as long as their new works acknowledge Kinolab and are non-commercial in nature.

Kinolab also employs digitally assisted techniques to understand film language at different scales. Armaselu and Fickers observe in their recently published anthology *Zoomland: Exploring Scale in Digital History and Humanities* that digital humanists are increasingly invested in "balancing out the global, universal standpoint of 'big data' with a 'small data' worldview, along with 'every point in between.'"⁵ That means moving between distant reading – or, in the case of motion pictures, distant viewing – and close viewing in order to take account of patterns *and* outliers. Building on the pioneering work of the digital humanists Julia Flanders and Matthew L. Jockers, *Zoomland's* editors call for a practice of "scalable

³ "Film Language Tag: 180-degree rule," *Kinolab*, <https://kinolab.org/browseTags.php?id=1&tag=180-degree%20rule&tt=1>.

⁴ "Film Language Tag: direct address," *Kinolab*, <https://kinolab.org/browseTags.php?id=243>.

⁵ Florentina Armaselu and Andreas Fickers, *Zoomland: Exploring Scale in Digital History and Humanities* (Berlin/Boston: Walter de Gruyter GmbH, 2024), 7: <https://doi.org/10.1515/9783111317779-001>.

reading” “to understand what ‘makes a work distinctive’ within a ‘very large context.’”⁶ This is a helpful framework for understanding the collaborative project on the close-up currently underway at Kinolab and Mediate, which involves all three conceptual levels of scale proposed by Armaselu and Fickers: a “ground view,” an “overhead view,” and a “bird’s eye view.”⁷

Over the last year, Kinolab and Mediate researchers have sought to understand how the close-up represents race, ethnicity, gender, and sexuality through a practice of close viewing that included watching 80 films and 90 television episodes in their entirety, analyzing their representation of diversity in weekly discussions, and creating and annotating approximately 700 clips to make their use of the close-up and representation of diversity discoverable on Kinolab.org. This phase of our research offered us a ground view, allowing us to note distinctive individual occurrences of the close-up and to grasp the complexity of how it represents diversity over the period of study, 1950-2000. It also yielded a key insight, which was that annotation schema such as those employed by the Annenberg Inclusion Initiative and the Geena Davis Institute for at scale studies of diversity onscreen cannot account for practices like blackface, yellowface, redface, or queer coding.⁸ Instead of being linked to demographic categories like those that form the basis for the U.S. census, these are linked to the *representation* of diversity onscreen. Close viewing revealed the need for a novel approach to the classification of minoritized characters organized around the idea of mediated representation – the cinematic and televisual construction of race, ethnicity, gender, and sexuality on screen. In contrast, it is unlikely that this kind of insight would have emerged from the bird’s eye view produced by the Geena Davis Institute’s “See It, Be It: What Families are Watching on TV – A Longitudinal Representation Study,” which collaborated with a machine learning team from Google Research to use AI-enabled technology to measure, among other things, the presence of three skin tones – light, medium, and dark – in 440 hours of popular scripted television shows.⁹

We are now developing an overhead view of the close-up and its representation of diversity. This view, achieved through exploratory data analysis, allows us to see the distribution of close-ups, diverse and otherwise, across American film and television clips in Kinolab over time, for example, and to compare the frequency of diverse close-ups in horror films with their frequency in science fiction films, a genre historically associated with a lack of diversity. We perform these kinds of analyses by extracting and sorting Kinolab metadata related to the motion pictures’ year of production, genre, and the presence of close-up and diversity tags. Our project to this point has moved between ground (close) and overhead (medium) views,

⁶ Armaselu and Fickers, *Zoomland*, 7.

⁷ Armaselu and Fickers, *Zoomland*, 10.

⁸ Stacy Smith, “Inequality in 1,600 Popular Films: Examining Portrayals of Gender, Race/Ethnicity, LGBTQ+ & Disability from 2007 to 2022” (USC Annenberg, 2023): <https://annenberg.usc.edu/research/annenberg-inclusion-initiative/raceethnicity>; and Sabyasachee Baruah, et al, “#SeeItBeIt: What Families Are Seeing on TV” (The Geena Davis Institute on Gender in Media, 2022): <https://seejane.org/research-informs-empowers/see-it-be-it-what-families-are-watching-on-tv/>.

⁹ Baruah et al, #SeeItBeIt, 16.

but the bird's eye (distant) view afforded by developing machine learning approaches would almost certainly yield additional important information for our project as it develops. For example, our researchers noticed significantly fewer close-ups than anticipated in Blaxploitation films like *Cleopatra Jones* (Jack Starrett, 1973) and *Foxy Brown* (Jack Hill, 1974), leading to the hypothesis that celebrating Black beauty via the close-up may have been too costly for these relatively low-budget productions. A bird's eye view would allow us or researchers with complementary interests to analyze the presence of the close-up in relation to production budget across films beyond the Blaxploitation genre, yielding additional insight into the industrial influences that determine which kinds of films include close-ups and which populations achieve different types of representation.

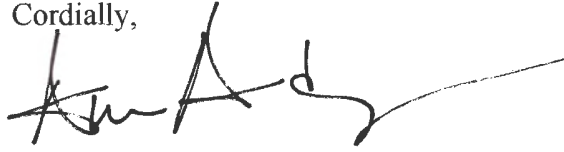
I hope that this letter provides useful additional context about how Kinolab makes use of existing exemptions to the DMCA and why I support expansion of the TDM exemption to permit corpora sharing for the purposes of conducting independent data mining research and teaching. I note in closing that it has been concerning to see research that my colleagues, students, and I have spent years developing significantly mischaracterized by opponents to the proposed TDM expansion in the course of these proceedings. For example, DVD CCA and AACS LA include the clip discussed above, "A Dinner with Mr. Chan and Mrs. Chow" ("Exhibit 11"), and other clips as evidence of how Kinolab allegedly space shifts circumvented motion pictures to its platform "merely to view and describe the scenes of the motion picture" (p. 3), but they omit the film language annotations that represent the primary focus of our research from their included screen shots. Kinolab explicitly addresses the centrality of this aspect of our research in the "Statement on Fair Use and the Digital Millennium Copyright Act"¹⁰ publicly available on our platform and submitted with this letter as an attachment, as well as in our peer-reviewed publications. While we were never made aware of opponents' concerns prior to their articulation of them in the current regulatory proceedings, we respect the creatives and rightsholders that make the motion pictures that are our primary objects of study. Our work is for the film and media studies research community and we are proactively taking the following steps to clarify that further: 1) We are implementing additional measures to ensure that access to the platform and its contents are restricted to only faculty and students with validated .edu email addresses (access for faculty and students affiliated with non-U.S.-based colleges and universities, who will lose their registration status in this process, may request access on a case-by-case basis); 2) Our developer has added measures to impede users' ability to download clips via right-clicking and will continue to explore ways to prevent this during upgrades to Kinolab.org in the upcoming academic year; and 3) Bowdoin College's library acquires DVDs for film and television clips represented on Kinolab.org, and we will be adding a link under each clip directing users to the corresponding DVD entry in the College's online catalog.

Thank you for the opportunity to contribute my perspective once again as a scholar whose research has been enabled by exemptions to the DMCA, and to address fair use with respect

¹⁰ "Kinolab Statement on Fair Use and the Digital Millennium Copyright Act," *Kinolab*, accessed March 12, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://kinolab.org/lib/copyright.pdf.

to Kinolab. I am happy to provide additional examples of the contributions that our digital humanities platform has made to the academic study of film and television.

Cordially,

A handwritten signature in black ink, appearing to read 'Allison A. Cooper', with a long horizontal flourish extending to the right.

Allison A. Cooper

Director, Kinolab

Associate Professor of Romance Languages and Literatures and Cinema Studies

Kinolab Statement on Fair Use and the Digital Millennium Copyright Act

Each clip in Kinolab's collection has been enriched with metadata by users to highlight its distinctive use of film language. This analytical process transforms the motion picture clips that are our source material and enables users to view them in new, unanticipated ways. This is how Kinolab educates film and media students and stimulates new research among film and media studies faculty. The project's nonprofit, educational mission and its transformative repurposing of motion picture clips represent a fair use of copyrighted work under Section 107 of the Copyright Act of 1976.

Under Section 107, four factors are to be taken into consideration when determining whether the use made of a copyrighted work – in Kinolab's case, motion pictures – is fair. These are 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work. Fair use experts suggest that these four factors can be condensed into two key questions: 1) "Did the use 'transform' the copyrighted material by using it for a purpose significantly different from that of the original, or did it do no more than provide consumers with a 'substitute' for the original?" and 2) "Was the material taken appropriate in kind and amount, considering both the nature of the copyrighted work and the use?" (see "Code of Best Practices in Fair Use for the Visual Arts," p. 17 and "Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing," p. 181). As the discussion below shows, in the case of Kinolab the answer to both of these questions is yes.

The moving image clips contained in Kinolab's collection have been extracted from the films and series in which they originally appeared and repurposed to illustrate key concepts relating to film language, especially cinematography, *mise-en-scène* (a category that includes actors, lighting, décor, props, and costume), editing, and sound. For instance, "Slo-Mo Hotel" is a Kinolab clip from Christopher Nolan's 2010 film *Inception* that film-student curators tagged as an example of parallel editing (an editing technique that alternates between two or more strands of action in separate locations, often presented as occurring simultaneously). Kinolab invites users to study this brief excerpt from *Inception* in light of the formal techniques highlighted in its metadata. A user interested in learning more about parallel editing could then pursue this line of inquiry further by clicking on the parallel editing tag and viewing other clips in the collection associated with it, from D.W. Griffith's *Birth of a Nation* (1916), which pioneered the technique, to Italian filmmaker Paolo Sorrentino's *Il divo* (2008), which uses it to evoke the pervasive power of Italian politician Giulio Andreotti. While the original purpose of the films from which these clips were extracted was to entertain, the clips' purpose in Kinolab is to educate and stimulate further discussion of the formal film techniques that they exemplify. Likewise, the audience and market for the original films and the repurposed clips are different, consisting on the one hand of filmgoers who are consumers and, on the other hand, of media studies students and scholars who want to learn about film language.

Kinolab's clips are digital-format reproductions of born-digital works (DVDs and/or digitally transmitted video). Clips in the collection present distinctive examples of the film language users are studying and are therefore reproduced in their original format without modifications to aspect ratio or the original work. The project is subject to the provisions of the Digital Millennium Copyright Act (DMCA), which amended U.S. copyright law in 1998 and originally prohibited the circumvention of technological protective measures on DVDs whether or not there was an infringement of copyright itself. Recent exemptions to the DMCA permit the circumvention of these controls by university faculty and students for the purpose of criticism, comment, teaching, or scholarship: precisely Kinolab's users. DMCA exemptions also prescribe that only short portions of copyrighted works be used for purposes of criticism or comment, a rule that Kinolab respects by limiting the portion of any whole copyrighted motion picture represented in its clips to scenes that represent distinctive examples of film language. Contrary to common assumptions, fair use does not specify a maximum allowable amount of material to be taken from a copyrighted work (see "Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing," p. 181-182). Instead, that amount depends upon how much is needed to illustrate a point or stimulate discussion among one's target audience.

Finally, Kinolab restricts access to its collection to faculty and students and controls that access with password protection. Users are informed when applying for access to the site that its materials are available for educational use only.

This affirmative statement of Kinolab's compliance with fair use and the provisions of the DMCA was made by taking into consideration shared professional understandings among film and media scholars as articulated by the various organizations that represent us. These include key publications from the Society for Cinema and Media Studies (SCMS), the College Art Association (CAA), and the Center for Social Media in the School of Communication at American University. Their publications are, respectively, the "[Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing](#)" (2010), the "[Code of Best Practices in Fair Use for the Visual Arts](#)" (CAA, 2015), and the "[Code of Best Practices in Fair Use for Online Video](#)" (the Center for Social Media, 2008). We have also examined the applicable section of U.S. Copyright Law, [Title 17 of the U.S. Code](#), especially [Section 1201](#), which contains the evolving provisions of the DMCA that are [updated triennially](#) in rulemaking proceedings administered by the Register of Copyrights.

For more information, contact Project Director Allison Cooper in the Cinema Studies Program at Bowdoin College, 7800 College Station, Brunswick, Maine 04011 or via email at acooper@bowdoin.edu.