



ASSOCIATION OF
RESEARCH LIBRARIES



**BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS**

**EXEMPTION TO THE PROHIBITION OF CIRCUMVENTION OF
COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL
TECHNOLOGIES**

COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE

Pursuant to the Notice of Inquiry (NOI) published by the Copyright Office in the *Federal Register* on September 29, 2011, the Library Copyright Alliance (LCA) submits the following comments on exemptions that the Library of Congress should grant pursuant to 17 U.S.C. § 1201(a)(1)(C). The LCA consists of three major library associations—the Association of College and Research Libraries, the American Library Association, and the Association of Research Libraries. These three associations collectively represent over 139,000 libraries in the United States employing 350,000 librarians and other personnel. These three associations cooperate in the LCA to address copyright issues that have a significant effect on the information services libraries provide to their users. The LCA's mission is to foster global access to information for creative, research, and educational uses.

I. Class of Works

Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention

believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of...Educational uses by college and university professors and by college and university film and media studies students.

II. Summary of Argument

In the previous Section 1201 rulemaking, the Library of Congress granted an exemption for the circumvention of the Content Scrambling System (CSS) on lawfully acquired DVDs in order to incorporate “short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of...Educational uses by college and university professors and by college and university film and media studies students.” We seek renewal of this exemption. College and university faculty and students have relied on this exemption since it was issued, and will continue to need it so long as motion pictures are distributed on DVDs protected by CSS.

III. Argument

The Librarian of Congress first granted an exemption for the creation of clip compilations by film and media studies professors in 2006. The Librarian broadened this exemption to all college and university instructors, and to film and media studies students, in 2010. In the final rule issued by the Librarian on Congress in the 2010 rulemaking, the Librarian found that

college and university educators [and] college and university film and media studies students ... frequently make and use short film clips from motion pictures to engage in criticism or commentary about those motion pictures, and that in many cases it is necessary to be able to make and incorporate high-quality film clips in order effectively to engage in such criticism or commentary. In such cases, it will be difficult or impossible to

engage in the noninfringing use without circumventing CSS in order to make high-quality copies of short portions of the motion pictures.

75 Fed. Reg. 43825, 43828 (July 27, 2010).

Furthermore, the Librarian agreed with the Register of Copyrights that the use of short portions of motion pictures in a new work created for purposes of criticism and commentary was a “classic” fair use. *Id.*

The grounds for the 2010 exemption remain true today. Instructors and students still need to incorporate high-quality copies of short portions of motion pictures in compilations and other new works for purposes of commentary and criticism. This need undoubtedly will persist for the next three years. And since many motion pictures have been and will continue to be distributed on DVDs protected by CSS, instructors and students will need to circumvent CSS in order to make these uses. The examples provided below demonstrate that the exemption is widely used in institutions of higher education across the country. Additionally, the instructors report that the material they need usually is not available from licensing services (or YouTube).

Although it is unlawful, DeCSS, a program that decrypts CSS without the authorization of the CSS consortium, is widely available, and anyone who wants to make unlawful copies of protected DVDs can do so with little trouble. Nonetheless, CSS places enough of a technical barrier to prevent the vast majority of consumers from copying and redistributing the DVDs they purchase or rent. For the past five years, the existing exemption and its predecessor have not removed this technical barrier, nor will the renewal proposed here. It will not make DeCSS any more prevalent, nor will it encourage more consumers to use DeCSS. Instead, the proposed exemption will simply permit instructors and students to make appropriate educational uses of motion pictures.

IV. Facts

We requested that librarians around the country collect examples of how educators and students have used the existing exemption. Below are excerpts and summaries of some of the responses we received. Without renewal of the exemption, the DMCA for the next three years will adversely affect these sorts of non-infringing uses:

A. Uses by Instructors

- **Gary Handman, Director, Media Resources Center, Moffitt Library, U.C. Berkeley**

I will be co-teaching a seminar in the Sociology Department at UCB this coming Spring, which will concentrate on the uses of documentary film as sociological evidence. The course will also use documentary film as a way of engendering critical thinking about social science documentation and evidence in general.

I will be making use of many clips in the course of this seminar: *e.g.*, the course will open with a compilation of clips taken from 30 documentaries from diverse eras and in diverse styles to kick off the discussion of documentary definitions (what IS a documentary and what is the relationship between this type of filmmaking and the "real" or historical world?). The compilation will include clips from both classic and post-modern documentaries, as well as from feature films that have adopted certain documentary styles and conventions (*e.g.*, *Battle of Algiers*; John Cassavetes' *Faces*).

This introduction and use of clips is absolutely essential for establishing the kinds of inquiry that will take place during the balance of the class. The class runs two hours per week, and it would be absolutely impossible to accomplish this kind of things if I had to find these clips in real time; it would also completely shoot the rhythm and flow of the discussion.

- **Mark Kaiser, Berkley Language Center, U.C. Berkeley**

Clips cut from foreign language films are instrumental in providing students with authentic materials to improve their listening comprehension, their awareness of cultural differences, their understanding of the target culture's value system, and their analytical skills as they come to understand how meaning is made in a filmic text.

- **Gerald Herman, Northeastern University**

The following is an outline of an introductory lecture used in courses such as “Exploring Humanities Through Film,” “History and Film,” and “History and Media.” The examples are individual scenes from the designated films placed on a single DVD.

HISTORY THROUGH FILM, FILM AS HISTORY

Introduction: Film uses rather than Film types

Example 1:

Alexander Nevsky (1938):

- as medieval costume drama;
- as Stalinist homage to a precursor;
- as foreign policy warning against aggression;

I. Film as historical presentation

goal: to bring "to life" some aspect of the past using either historical recreation or actuality film (sometimes as a realistic context for a fictional story), or to investigate stereotypes of the past.

Examples 2 and 3:

The Court Jester (1956)

Robin and Marian (1976)

"Unlike "real history, which has the unfortunate tendency to be untidy, non-linear, anti-climactic, and open-ended, film presentations are supposed to be coherent and intentional, following the so-called Classical Unities—that is, having a beginning, a middle, and an end. In order to accomplish all this in a limited time span, these presentations often:

- collapse the number of characters and events (or even create wholly fictional ones) through which the action takes place;
- telescope the duration of and the time between events;

- over-rationalize and over simplify the motives, events, and results themselves;
- pay more attention to the accuracy of (often conjectural) visual details (because film is a visual medium requiring what Structuralists call "thick representation*") than on historical accuracy;
- cast motivations characters, and events in familiar, often stereotypical molds (sometimes using actors, [locales, lighting, effects, or music], whose screen *personas* carry heroic or villainous assumptions with them) as a kind of shorthand to insure instant viewer comprehension.

II. Historical Presentations take a number of forms:

A. As Fact:

to present, dramatize and/or lend dimension to actual historical persons or events

Example 4:

Gettysburg (1993)

Example 5:

Newsreel companies' title sequences

Actualities/Documentaries/Newsreels as edited presentations:

- rarely unedited footage
- location shots/file footage/wild sound/archive sound
- narrative (voice overs)
- music
- participant re-enactments/recreations
- special effects

And audiences knew about the tricks at the time:

Example 6:

"Too Hot To Handle" (1938)

B. As Atmosphere:

to lend a sense of realism (verisimilitude)--sometimes defined in terms of popular perceptions of the past--to fictional stories

Example 7:

Nero—or the Fall of Rome (1909)

Example 8:

The Sea Hawk (1940)

Example 9:

Germinal (1994)

Example 10:

The Guns of Navarone (1961)

Example 11:
Forrest Gump (1995)

C. As Analogy:

to use events in the past (or fictional stories) to define, illuminate, or legitimate contemporary events or experiences, especially when the contemporary events are sensitive, controversial, or too blatantly propagandistic (as in *Alexander Nevsky*)

Example 12:

The Sea Hawk (1940) continued

Example 13:

Walker (1987)

D. As Historical Interpretation:

to present a strong interpretative theory of causation. **All films have them**, and most are so familiar to contemporary audiences that even though they might not have been the motivating factors for the historical actors/events themselves, they make sense to us. Common ones are:

- pop-psychology;
- religious fervor;
- the mystical hand of fate (inevitability);
- economic determinism;
- heroic individual actions that change history.

Example 14:

The Last Emperor (1987)

- **Dr. Hazel Cramer, State University of NY Distinguished Teaching Professor of French Emerita & Lecturer, Modern Languages & Literatures, Ithaca College**

The French courses that I teach, courses at all levels, are heavily dependent on visual input. Films (complete films, using VHS tapes and DVDs purchased by the library or personal copies) are routinely part of assignments and are available via the Multimedia Desk Reserve in the library. In order to make sure that students understand what they will see and what they are to do (classes at all levels are taught in the target languages), clips are used to introduce the subject matter and to orient students. Clips are also used to complement course material from books, to show who a famous person was (Charles de

Gaulle, for example) or to show a film portrayal of a famous event (the English takeover of Quebec in 1763, for example).

- **Dr. Sergio Pedro, Modern Languages and Literatures, Ithaca College**

I teach linguistics and Spanish language and literature. I cannot overestimate how vital the use of film clips is for illustrating cultural information to a classroom. When reading a written text a student can not gather the same information as (s)he can while watching characters or people speak and relate to each other first hand, in their given language or dialect. I find film useful for teaching language, for teaching culture and for illustrating examples of literary interpretation and criticism.

Some films I use: *Mujeres al Borde de un Ataque de Nervios*, *Volver*, and *El Norte*.

- **Elisabeth Nonas, Associate Professor and Chair Department of Cinema, Photography, and Media Arts Roy H. Park School of Communications, Ithaca College**

In my screenwriting classes, I compare the screenplay to the film clip that I show. We talk about the differences between what was originally written and what ended up on the screen. I also discuss the descriptive passages in a script and use a clip to illustrate how the non-dialogue passages translate to the screen. I also use clips to illustrate points I make about writing screen dialogue, character description, stage directions.

In my Story class, I use film clips to talk about adapting a novel to the screen, and also to illustrate the key elements of three-act structure.

- **Danielle Whren Johnson, Digital Access Librarian, Loyola/Notre Dame Library, Maryland**

I work for the Loyola/Notre Dame Library, which serves both Loyola University Maryland and Notre Dame of Maryland University. We have a number of faculty from

both schools who use video clips in the classroom. Many times faculty members do not want to show an entire video when only a small portion of it will illustrate their point. It is much easier and more efficient for them to have the clips set aside ahead of time rather than trying to cue them up while they are teaching, especially if they are using multiple clips during one class session. Having to locate specific clips during a class session is a waste of class time for both faculty and their students. Here is a list video clips used in classes at our two institutions:

Communication Arts, Loyola University Maryland:

La Haine
Le Gone du Chaaba
The Last Metro
Super Size Me
Titicut Follies
Harvest of Shame
The Name of the Rose
The Road to Perdition
The Man Who Wasn't There
Blood Simple
Naked Lunch
Mexican Fantasy
The Third Man
2001: A Space Odyssey
Stellar
Mysterious Journey
Dolores Claibourne
Chinese Fire Drill
Last Year at Marienbad
Psycho
Triumph of the Will
Amelie
Olympia
Andalusian Dog
Brazil
Dreams
Jaws
Rear Window
The Untouchables
The Birds

The Thin Blue Line
Hiroshima Mon Amour
Dr. Strangelove
Strangers on a Train

History, Loyola University Maryland:

Oliver Twist
Importance of Being Earnest
Gangs of New York
Iolanthe
HMS Pinafore
Queen Margot

Pastoral Counseling, Loyola University Maryland:

When Bad Things Happen to Good People
Shadowlands
Ordinary People
Amazing Grace

Modern Languages, Loyola University Maryland:

Blue Bird

Theology, Loyola University Maryland:

Race: The Power of an Illusion

Psychology, Loyola University Maryland:

On Being Gay

Education, Loyola University Maryland:

Human Development: Birth to Age 2 ½

Counseling, Loyola University Maryland:

Lars and the Real Girl

Business, Notre Dame of Maryland University:

Outsourced
Marketing

Pharmacy, Notre Dame of Maryland University:

Leadership: The Art of Possibility

Religious Studies, Notre Dame of Maryland University:

Who Wrote the Bible

Art, Notre Dame of Maryland University:

Performance/Audience Mirror

Contact 2

Contact 3

- **Fiona MacNeill, Academic Technologist, Carleton College**

Many faculty across all subject disciplines utilize video and audio clips. Examples range from source clips, such as those studied in Cinema and Media studies and Theater/Dance, to illustrative clips used to highlight or explain a point or process. Audio clips have also been used in English in order to help exemplify the era in which a given piece of literature was written. The use of clips in an educational context can elucidate a concept, fuel interest and punctuate text-heavy sources; media clips are invaluable tools in an educator's arsenal.

Online services seldom offer favorable licensing options for education.

Furthermore, it is very useful within the scope of a class to be able to pick out a specific section of a new media artifact for the students to analyze.

- **Jennifer Schlueter, Assistant Professor, Department of Theater, The Ohio State University**

I teach several courses for the Department of Theatre that require extensive use of DVDs. And being able to legally rip certain scenes to make a compilation would help me not waste class time swapping DVDs and cueing things up. It would also allow me to make specific comparisons more swiftly.

For example, I teach a course on contemporary performance, and many of today's theatre companies make their work available on DVD. On a given class period, we may be talking about up to four companies. That's four DVDs of the work of people like Young Jean Lee, Redmoon Theater, or the Neofuturists. I also teach a course called Self/Stage. This is a course on solo performance, and similar issues apply. On some days, we'll talk about up to eight solo performers. And there's no way to really understand live performance on the page alone. So we try to watch excerpts of work from Spalding Gray, Rachel Rosenthal, John Leguizamo, and quite literally scores of other people across the term. Having to swap out eight DVDs in a four-hour class period can be disastrous for the rhythm of good teaching.

- **Georgia State University**

Information Systems and Technology

Librarian:

Many GSU faculty from a wide range of disciplines use clips in the classroom. Faculty often tell us that video can help model a situation more realistically than discussion/text/still images. They also have a perception that video is more immediate and adds an element of excitement for students, or at least adds variation.

Instructor:

Some things are better illustrated with video.

School of Art and Design

Instructor 1:

Clips are used to show the important artists who make the work the students are learning about.

Instructor 2:

We use clips of interviews with leaders in the field; showing exemplary motion design including film titles, special effects, and animation; show tutorials.

Instructor 3:

Video clips are a useful tool to educate this generation of students. For them, images need to move to keep attention. In textiles structure teaching, DVDs work better teaching the skill sets that require a series of movements. DVDs illustrate techniques better.

Instructor 5:

I use clips to supplementary course materials on contemporary art. Many four-dimensional artworks are not available by any other means to students, and are exponentially more helpful than still images.

Communications

Instructor 1:

Clips can illustrate a theory or concept in ways that can't be done without this illustration. In some of my classes, we analyze images of women in popular culture. This would not be possible without access to video clips. We can, and do, look at static images in magazines, as well, but that is not the whole picture, and an argument can be made that TV, video and movie images have a greater impact on viewers.

Instructor 2:

I teach Film 1010 Aesthetics and Analysis and visual examples are *essential* for explaining formal film techniques to students. This year I have a several international students who can be intimidated by the technical vocabulary we use to discuss film

techniques—fortunately, being able to show clips in class helps students learn on a more even field.

Renting films from online services is not a practical way to lead a class. In my class we need to see several clips in one class period from a variety of films, so simply pausing an entire film is not the best use of time. This is especially true when Internet access in classrooms can be unreliable.

Instructor 3:

I use clips to teach theatre. Whenever possible I try to show students specific movements or plays we're discussing rather than just describing them.

Theatre is so specific I can't always find what I want just through what the library has been licensed or what has turned up on the web.

Instructor 4:

I use clips to illustrate points made about film and TV style, content, storytelling strategies, etc. It is crucial for me to be able to easily access clips to illustrate my points. Without this ability, it would be very costly and labor intensive to do my job.

Online services all employ ads or make it difficult for me to skip around to the needed clips. They are inefficient since they are designed for showing entire films/shows, rather than specific clips for the purposes of illustrating points in class.

Instructor 5:

I am a film professor, and clips are crucial for training students to perform close critical analysis and to illustrate theoretical concepts. The examples are innumerable: my teaching cannot be conducted without clips.

Instructor 6:

I teach film and television studies, and sometimes a clip is the best way to document an aesthetic technique, a narrative approach, or a historical moment. Making a clip disc makes teaching MUCH easier.

There are so many films that are impossible to access online. Then there are examples of films that used to be in the public domain (like *Breathless*) that have had their copyright restored. This is destructive to my pedagogical efforts. Plus, I choose each clip for a particular educational purpose—having to choose from the few scraps that are available again would determine what I teach in a manner destructive to educational goals.

Instructor 7:

I teach film studies and film theory, and students grasp the ideas best when I demonstrate them using film examples. I have too many examples of this to share all, but for example, last week I showed clips from *Silence of the Lambs* to demonstrate the imbrications of touch and vision in the experience of cinema, which emerges in part through a combination of camera movement and editing. Students wrote a short in-class analysis of the two clips I showed. This and the clips provided concrete material for discussion and tangible examples of an idea that might otherwise have seemed abstract. I try to do this during almost every class, because when I have used the technique more sparingly, students have approached me at the end of class with comments like “Can we do this kind of thing more often? This is the clearest these ideas have been so far!” My students benefit every single time I use close analysis of specific clips in class discussion.

Existing clip services will never meet faculty needs. The clips I use are tailored to very specific ideas that can't be anticipated by a producer or clip-making service.

Instructor 8:

I teach media classes, so I need to show media!

Music

Instructor 1:

I use clips to illustrate children's music learning.

Instructor 2:

I use clips to show interviews with experts in the field.

- **Mathew Bainbridge, Department of Electronic Media & Film, Towson University, Maryland**

As an instructor of media both theoretical and practical, I would find it nearly impossible to connect with students effectively without concrete examples of the material I'm covering in class—particularly in Aesthetics and other film studies courses. There are limits on how much information you can convey on the blackboard. If I'm talking about Linear Perspective, a picture would help, but a clip of a director using Linear Perspective in the context of a narrative film makes all the difference. Without clips, the students have no context for ideas. Everything is theoretical. All of the ideas that I cover in my classroom have practical applications. The clips enable me to take the students from theory to practice. This is essential in the specific courses that I teach.

In my Aesthetics class (which has always been full since the time I first began teaching it six years ago), I show clips from 64 movies in a semester. Students consistently inform me how much they enjoy that particular class, without those clips the class would be unrecognizable. In every course I teach, students will ask me if I have an example to show them when a specific concept or technique confuses them. In my experience with EMF students, they tend to be visual learners. In other words, no matter

how elaborate the instructions for an assignment may be, their performance is drastically better if the students can look at something visual which supports the written instructions. I feel comfortable in saying that I do not believe that the majority of EMF students would be capable of achieving anything that even resembles their potential without interactive visual media (of which clips are a critical element).

I do not use the Internet for clips very often. Honestly, I do not even look, as the low quality of most Internet clips make for very poor classroom resources.

- **Ryan Murray, Department of Electronic Media & Film, Towson University, Maryland**

As a professor of Electronic Media & Film, I am always using clips from copyrighted works in my classroom—these works are what my students study. We look at great examples of the art and craft that we are studying, discuss them, debate them, and take inspiration from them.

The simplest advantage that this exemption provides is the ability of a professor to have multiple clips from a large number of different discs easily cue-able to make class presentations run smoothly. I would literally lose significant portions of instructional time (not to mention student attention) if I had to load each DVD, navigate its chapter menu, and fast-forward to the relevant part of the film, rather than simply prepare clips in advance.

The legal services on the Internet seem pretty scant really, and they would suffer a lot of the same drawbacks as a physical DVD. Imagine teaching a 3-hour lecture on the history of editing, wherein you might want to show 1-5 minute clips from something like twenty different films. This would either require loading up twenty physical DVDs, with no ability to pre-load or prep to save time in class, or you would have to sign in to

something like Netflix, let an entire film buffer, scan through to the relevant section, and then close and choose the next film. It's much more reasonable and productive to use time outside of class to isolate appropriate clips and simply run through a list of clips from your desktop during your presentation.

- **Rick Davis, Cataloging Librarian/Copyright Liaison, Towson University, Maryland**

In my role as the library's copyright specialist, I am often asked to review requests from faculty to dub or rip media for teaching purposes. To pick just one example, we copied short clips from three French-language films for a section of French 301 (Advanced Conversation). We copied two or three clips, each approximately two minutes in duration, from the films *Amelie*, *Avenue Montaigne*, and *Comme une Image*. The instructor requested the clips because she thought it would be instructive for her students to see conversation by native French speakers in a dramatic context, and also because she knew that the clips would engage her students' interest more than a standard dialogue from a French instruction CD would.

B. Uses by Students

- **Fiona MacNeill, Academic Technologist, Carleton College**

Clips were used as base materials in Professor Ronald Rodman's Cinema and Media Studies class entitled "Sound & Music in New Media." The class, which took place in spring 2010, encouraged the students to work with the theories of musique concrète to make musical mash-ups comprised of both open source and short segments of copyrighted materials. Professor Rodman's class stands out as an educational experience that would not have been possible before the exemption, or at least would have reduced the scope of the assignments that the students could produce. The students were able to

create and share their assignments in a private forum and by being able to use contemporary materials, the music that they produced was more relevant to their experiences. This is important as the time investment for the students to learn audio editing software is significant and invigorating materials for the assignments are a strong motivator. The student work only existed within to class setting and the class-only forum so the materials themselves stayed within the domain of the electronic classroom. Giving students an opportunity to work with these artifacts, as in another context they might work with data or library books, can lead to a much more in-depth level of understanding.

- **Georgia State University, School of Art and Design**

Design students pull stills and clips from motion pictures to practice motion editing and to create demonstration page layouts, DVD packages, and the like. This is invaluable for graphic design students and they do this as part of regular assignments.

Respectfully submitted,



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