



Foundation for Individual Rights in Education

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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 2011-07

Comments of the Foundation for Individual Rights in Education

Pursuant to the Notice of Inquiry of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, the Foundation for Individual Rights in Education submits the following comments and respectfully asks the Librarian of Congress to exempt the following classes of works from 17 U.S.C. § 1201(a)(1)'s prohibition on the circumvention of access control technologies for the period 2012-2015:

Proposed Class #1: Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.

Proposed Class #2: Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary.

The Foundation for Individual Rights in Education (FIRE; thefire.org) is a non-partisan, non-profit 501(c)(3) educational foundation dedicated to defending and sustaining freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience at our nation's colleges and universities. To fulfill our mission and expose rights abuses on campus, FIRE hires videographers to create short videos documenting FIRE cases and victories.

In September 2011, FIRE engaged in advocacy on behalf of the First Amendment rights of Professor James Miller of the University of Wisconsin-Stout (Stout). Miller had been threatened with criminal disorderly conduct charges and reported to the university's "threat assessment team" for affixing two posters near his office door.

The first poster featured actor Nathan Fillion's character in Joss Whedon's science fiction television series *Firefly* and a line from an episode: "You don't know me, son, so let me explain this to you once: If I ever kill you, you'll be awake. You'll be facing me. And you'll be armed." (The character, a jaded loner, is responding in a characteristically tough but principled way to a fugitive doctor on his spaceship who has asked how he can be sure he won't be killed in his sleep. In essence, the character is assuring the doctor that he "plays fair.")

Stout Chief of Police Lisa A. Walter notified Miller that she had removed the poster because it "refer[s] to killing." After Miller replied, "respect my first amendment rights," Walter wrote that "the poster can be interpreted as a threat." Walter also threatened Miller with criminal charges of "disorderly conduct" if he posted any similar poster.

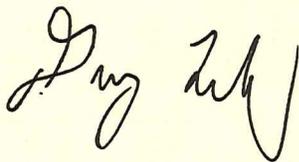
In response to Walter's censorship, Miller placed a new poster on his office door. The poster read, "Warning: Fascism" and mocked, "Fascism can cause blunt head trauma and/or violent death. Keep fascism away from children and pets." A few days later, Walter informed Miller that this poster, too, had been censored as a "threat" because it "depicts violence and mentions violence and death." She added that Stout's "threat assessment team" had made the decision. College of Arts, Humanities and Social Sciences Interim Dean Raymond Hayes then scheduled a meeting with Miller about "the concerns raised by the campus threat assessment team."

Miller came to FIRE for help. FIRE wrote Stout Chancellor Charles W. Sorensen, citing Supreme Court precedent to explain that the posters were not a true threat, nor would a reasonable person expect them to cause a substantial disruption. Sorensen did not respond. FIRE then launched a national media campaign in defense of Miller's First Amendment rights. At least 1,000 people wrote Stout Chancellor Charles W. Sorensen to protest the university's treatment of Miller, and dozens of articles about the case appeared in the national media. Finally, senior administrators announced that Stout had reversed its decision, would develop a new protocol for handling such cases, and "will schedule workshops and/or forums during this academic year on First Amendment rights and responsibilities in higher education."

In December 2011, FIRE retained a videographer to produce a video about the victory at Stout. To communicate Stout's overreaction to Miller's protected speech, FIRE's videographer utilized a short clip of the *Firefly* dialogue featured on Miller's poster, as well as other short clips from the series. The company obtained the clips from YouTube and iTunes. Without fair use of the clips, the video's illustration of the rights violation at stake, the salutary effect of FIRE's advocacy, and the importance of robust free speech on our nation's college campuses would have been impossible. Given *Firefly*'s centrality in the narrative of this case and the clarity provided by viewing the character's quote in

context, being unable to use clips of the show would have left Stout's mistreatment of Miller incomprehensible to many citizens.

If the principles of fair use did not apply, it would be prohibitively difficult to discuss free speech issues arising from film or television productions in an informed and intelligent fashion. Further, given the range of our advocacy on behalf of student and faculty rights, it is impossible to predict the material we may need to make fair use of in future efforts, or the technical protection measures that may be in effect at such time. FIRE relies on the freedom to use such clips as fair use in making videos to promote, expand, and document our work on behalf of student and faculty First Amendment rights. FIRE therefore strongly supports the Electronic Frontier Foundation's proposed exemption.

A handwritten signature in black ink, appearing to read "Greg Lukianoff". The signature is fluid and cursive, with the first name "Greg" being more prominent than the last name "Lukianoff".

Greg Lukianoff
President, Foundation for Individual Rights in Education