

June 29, 2015

Ms. Jacqueline C. Charlesworth
General Counsel and Associate Register of Copyrights
United States Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

Re: Docket No. 2014-7
Exemptions to Prohibition Against Circumvention of Technological Measures
Protecting Copyrighted Works
June 3, 2015 Questions Posed to Class 7 Witnesses

Dear Ms. Charlesworth,

Although we were not witnesses in the Class 7 portion of the hearings, we would like to offer our thoughts, briefly, on the question of whether that proposed class should be “more specifically delineated...to encompass videos made for educational purposes.”

We do not believe that the exemption for the making of noncommercial videos should be explicitly broadened to include educational uses, nor should it be narrowed to exclude these uses. As discussed below in greater detail, we believe that the noncommercial video exemption may already apply in certain situations to educational activities, but the applicability of the exemption to education does not need to be spelled out in the text of the exemption itself. To do so could have the unintended consequence of narrowing the exemption with respect to other noncommercial uses that aren't referenced. The better approach, in our view, would be to leave the text of the proposed exemption as is while explaining in the commentary that the exemption could encompass some educational uses.

Schools and universities are diverse institutions that bring together a wide range of educators, students, and researchers. Indeed, many schools seek to prepare students for the full range of careers and opportunities. So there is bound to be overlap with other exemptions. Universities, colleges, and schools include archivists, computer security researchers, e-book authors, and documentary filmmakers who might all rely on multiple exemptions simultaneously or at different times. But educators and students may also use exemptions for activities in which only the educational exemption applies.

One can imagine a Venn diagram with some areas of overlap between different exemptions as well as large areas in which the exemptions stand on their own. If a teacher or professor makes a video clip for use in a presentation slide, she arguably has not made a video, so she may not qualify for the noncommercial video exemption, but the educational exemption would certainly apply. Similarly, if a student takes a clip from a video in order to analyze it orally or in writing as part of an in-class activity, he arguably has not made a noncommercial video. In another scenario, a professor may leave her classroom and return to the editing room in the evening. She has left behind her educator role and the exemption that applies, but her work may now be enabled by the noncommercial video exemption.

The label “commercial” can also be an unwieldy one in the educational sphere. Private schools, colleges, and universities charge tuition and collect fees for a wide range of educational activities; whether such activities are “commercial” is subject to debate. There are also for-profit universities (DeVry University for example), which might make use of the educational exemption but almost certainly could not use the noncommercial video exemption.

While we think that many if not all of the exemptions need to be updated to account for technologies like Blu-ray discs and MOOC platforms, we also think that some overlap in the exemptions is appropriate.

Best regards,



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