

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

THE LIBRARIES

Ms. Regan A. Smith
General Counsel & Associate Register of Copyrights
United States Copyright Office
Library of Congress
101 Independence Avenue S.E
Washington, D.C.
20559-6000

May 7, 2021

Dear Ms. Smith,

Re: Docket No. 2020–11 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works

Further to your letter of April 16, 2021, thank you for the opportunity to provide additional comments and to answer two questions asked of participants about the potential for an expanded exception under s.1201, Class 1. The purpose of expanding the existing exception is to allow educational institutions to circumvent a technological protection measure when a streaming license is not available, for the purpose of making an entire copy of a film or video from DVD or Blu-ray format so that the film may be accessed and streamed lawfully for the purposes of remote teaching and research. Specifically, below are the questions addressed in this letter:

1. Please identify whether and how licensors of full-length motion pictures for educational purposes have responded to the pandemic's disruption to education. Please include any examples of policy adjustments for educational licensing in light of the pandemic.
2. Please provide your views on regulatory language that would address any disruption to the educational licensing of full-length motion pictures during the pandemic.

With respect to question 1, I have consulted with our staff responsible for negotiating and acquiring streaming licenses at Columbia University Libraries and to date Columbia University has not been made aware of and has not been offered any policy or licensing concessions by any distributors of film in the academic market. While we may be aware of certain statements of goodwill that were made publicly by certain distributors, the statements have not translated into tangible discussions or results. Certainly, concessions concerning licensing costs have not been offered even where bulk license options were considered. In addition, I asked to meet with the Motion Picture Association on November 9, 2020 to discuss these issues in a broader context, and while I received an initial response from Karyn Temple, General Counsel of the Motion Picture Association, my subsequent two emails following up suggesting dates for a discussion did not receive a reply.

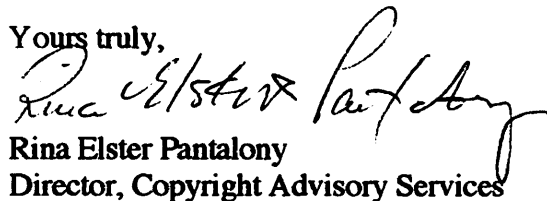
With respect to question 2, while the catalyst for this discussion has, indeed, been the pandemic, the return to robust in-person learning is dependent on many factors including the rate of vaccination both inside the United States and abroad. Columbia University announced recently that students will have to be vaccinated in order to return to campus in the fall. Many colleges and universities have made the same decision. This requirement means that in person learning will likely unfold gradually over time while vaccination rates continue to increase in the United States and abroad. S.1201 rulemaking is a process that is renewable every three years and circumstances concerning the pandemic will continue to evolve but in a manner that is not predictable with any degree of certainty. It is unclear how we can create an exception that is only applicable “during the pandemic”. It would, therefore, be optimal and reasonable to allow for an exception during the initial three-year rule making term but not have it renew automatically. Instead, all interested parties should return before the Copyright Board in three years time to review and discuss whether the exception should continue, be modified, or terminated. Therefore, I suggest that while the creation of the exception can reference the pandemic, the duration of the exception should not be dependent upon it because of the ambiguities. At the same time, the exception should not automatically renew for reasons already stated.

My suggested text for the expanded exception, in keeping with the current text, is:

During an initial three year rulemaking term, motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully made and acquired by an accredited non-profit educational institution, on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, and the person engaging in circumvention under paragraph (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section, acting on behalf of a non-profit accredited educational institution, determines after a reasonable effort, that non-circumventing alternatives are not available for license at a fair price; where circumvention is undertaken solely in order to provide lawful streamed access to its faculty, researchers and students for the purposes of research and teaching.

I remain available to answer any further questions.

Yours truly,



Rina Elster Pantalon
Director, Copyright Advisory Services