

January 25, 1999

Sayuri Rajapakse
Attorney-Advisor, Office of Policy
and International Affairs
United States Copyright Office
Copyright GC/I&R
PO Box 70400, Southwest Station
Washington, DC 20024

Dear Mr. Rajapakse:

The following comments are submitted in response to the recent notice posted by the Copyright Office in the Federal Register (63 FR 71167). I am submitting comments on behalf of my institution, the Technical College of the Lowcountry, one of 16 technical colleges in South Carolina, and also on behalf of the National Council for Learning Resources. NCLR is an affiliated council of the American Association of Community Colleges, and I am Chair for the current year. NCLR promotes library and learning resources programs in two-year colleges, and the focus of these comments is upon those programs.

As I am sure you are aware, America's two-year colleges vary enormously in almost every measurable aspect, and their library/learning resources programs vary accordingly. Each library/LRC is, however, responsible for providing effective support for whatever distance learning program is provided by the college, regardless of how or where it is delivered. Effective library support is an absolutely critical ingredient in ensuring the quality of distance learning programs. Certainly the Criteria of the Commission on Colleges of the Southern Association of Colleges and Schools explicitly require that effective library support be provided for any distance learning courses, and I expect that the same is true in other regions.

Because the types and varieties of distance education delivered by two year colleges varies widely, so do the types and varieties of library support which are provided. In some cases library support for distance learning courses may be provided through the use of a remote library or other facility with physical resources. In other cases, library support for distance education may be entirely through digital means, and in still others, support may be through a combination of means. Support resources will often consist of a combination of print, audiovisual, cd-rom, and online materials. These resources include books and their digital equivalents, original periodical articles, photocopies, and online versions of such articles, as well as various audiovisual materials. In the great majority of cases, these support materials are copyrighted by publishers, and not created by the library. Sometimes the entire copyrighted work is required, but sometimes not. If the library support material is delivered by digital means, then access to it will likely be controlled by remote authorization procedures established by each college. Certainly, each type of material and each library support service scenario presents special copyright problems

Mr. Sayuri Rajapakse
Page 2
January 25, 1999

Licensing plays a critical role in the delivery of digital library resources to students, whether they are on-campus or distant. While it is not normally difficult for a library to obtain a license for a digital product, very often vendors offer only a “one size fits all” license. That is, a vendor may offer a licensing arrangement acceptable and workable at a large college, but impossible to implement or monitor at a small college, or vice versa. It would certainly seem that the creation of a digital equivalent to the Copyright Clearance Center would solve many of these problems for both vendors and libraries, and would greatly simplify the permissions process

Colleges and their libraries use numerous technologies to protect the security of copyrighted resources, to prevent their unauthorized reception, use, and retention, and to facilitate the authentication or integrity of copyrighted works. These protections range from the presentation of id cards to enter on-campus computer labs to sophisticated remote authorization processes which permit distant users to access online resources, or to view video programming delivered by satellite. In any case, the security concerns of publishers over unauthorized copying or use of their materials in distance education are simply unwarranted in many cases. For example, there is no evidence that would-be pirates are eagerly waiting to tape a copyrighted program on air conditioning repair shown as part of a distance learning course. Even in the rare case where a feature film might be shown, the odds of a non-student taping or even viewing the program are extremely low. Colleges and libraries can, should, and do provide reasonable security against reasonably anticipated improper uses. Congress should require no more.

In general, copyright law as it applies to library support for distance education is not broken, and requires little fixing. The way to ensure that the copyright law will continue not to need much fixing is to affirm the rights of schools, colleges, libraries, faculty, and students to make fair use of digital resources. Certainly, there is no reason to believe that producers of copyrighted digital resources require substantially greater protection in the distance education environment than that which they already enjoy. The mere fact that a copyrighted resource is digital rather than print or analog should NOT mean that its use is not covered by the ordinary, everyday considerations of fair use. While Congress should encourage publishers and users of copyrighted materials to negotiate effective “safe harbor” guidelines (such as those offered by CCUMC) for the fair use of digital resources, under no circumstances should Congress permit the diminution of fair use as a viable concept in the digital environment. **Protection of the fair use exemption is absolutely critical to the cost-effective delivery of distance education courses, and to library support for them.**

There is one area of copyright law as it relates to distance education which does need fixing, however. The Section 110(1) exemption which permits use of a motion picture or audiovisual work only in face to face teaching situations should be revised to cover distance learning applications or other reasonable transmissions. The necessity to obtain and track a variety of licenses for these materials and their uses is extremely burdensome on colleges and libraries. In fact, some vendors are not even aware that they own distance transmission rights,

Mr. Sayuri Rajapakse
Page 3
January 25, 1999

and others will not even discuss licenses for distance use. Still others offer licenses only at outrageous costs, apparently thinking that colleges are the equivalent of commercial television advertising agencies. Even a college seeking in good faith to obtain a license for distance transmission often cannot do so. Very often distance education courses are taught "face to face" in one location and delivered simultaneously by satellite or other technology to remote locations. It makes no sense for the viewing of a video to be perfectly legal in the "face to face" classroom, yet illegal in the distance classroom. This strange distinction turns many distance educators into unwitting infringers, and it should be changed. Publishers can make a business decision as to whether they should try to recover what little revenues they may lose from distance licensing by raising the cost of public performance rights and original sale price of new materials.

It is important to note that an undue reliance on complex compliance, licensing, and monitoring schemes simply will not work, either for publishers or their customers. Copyright compliance will become simply another regulatory burden which will drive up the cost of doing business for libraries and colleges. In some cases these costs will be passed along to the customers through higher tuition and fees, but in others colleges will simply choose not to use the materials, and course content will be inevitably weakened. This could lead to a "haves versus have-nots" situation in which institutions able to manage complex copyright compliance would be at a real competitive advantage over institutions which could not do so. Copyright law must remain simple enough so that all institutions and even individual educators can understand and comply with it.

Thank you for your consideration of these comments. I will look forward to the response of the Copyright Office on these issues.

Sincerely yours,

Richard N. Shaw

Comments submitted by: Richard N. Shaw
Director, Learning Resources Center
Technical College of the Lowcountry
921 Ribaut Road
PO Box 1288
Beaufort, South Carolina 29901-1288
843-525-8304
FAX 843-525-8237
RSHAW@TCL.TEC.SC.US

