

Testimony Before the U.S. Copyright Office  
Public Hearing on Distance Education  
Friday, February 12, 1999  
University of Illinois at Chicago  
Chicago, Illinois

I am Sharon Hogan, University Librarian with responsibility for Academic Computing at the University of Illinois at Chicago. I am responsible for libraries and academic computing on this campus and on the campuses located remotely in Peoria, Rockford and Urbana.

Today I want to focus on the student and the educational process that requires the student to identify, evaluate and synthesize information as part of learning. My goal is to underscore the need for a change in Section 110(2) “to enable the display and performance of copyrighted works at remote locations at times selected by students” and to ask that “the distinction in current law between types of works that qualify for a distance education performance exemption be eliminated.”<sup>1</sup> In addition, I would like to suggest that licenses for digital works are problematic and do not replace the need for a change in Section 110(2).

A typical undergraduate assignment for a business marketing class or advertising design class might be to examine an advertising campaign of a major corporation and to present the findings in a twenty minute class presentation. Why was the advertising campaign constructed in the way it was? Did it address the market share of the product? Did it address the buyers of the product? Why was a particular media chosen? This research problem requires the student to find and analyze information and then to organize that information into a presentation. It anticipates a real world problem which requires critical thinking and information-seeking skills .

I would like to step you through the research process in order to emphasize that copyrighted information is used over and over. First, one must choose a corporation to study. There are a number of directories that provide access by geographic location, size or product line. For example: *Directory of Corporate Affiliations, Illinois Manufacturers Directory or LaSalle Banks Guide: Major Publicly Held Corporations and Financial Institutions Headquartered in Illinois*. Handbooks have information beyond mere listings— information that begins to build a picture of a corporation, its products and its market (*Hoover’s Handbook of American Business*). Once a corporation is identified, one must determine if there is enough information available to be able to create a presentation. Information about corporations is found in annual reports, Security and Exchange

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<sup>1</sup> Quoted from testimony by Laura N. Gasaway, January 26, 1999, U.S. Copyright Hearing on Distance Education.

filings and articles in magazines and newspapers. One uses indexes to locate articles in magazines and newspapers, indexes such as *Business Periodicals Index*, *General BusinessFile ASAP* or *Wall Street Journal/Barron's Index*. If there isn't enough information available on a corporation, then the whole process starts over again. Once a corporation is chosen, then specific information about product lines, market share, and buyers must be located. Again, one uses directories, handbooks and indexes. Phase two is analyzing a media advertising campaign. Ads might be found in magazines and newspapers or industry publications. Advertising campaigns might be written about in *Advertising Age* or other journals. In each step of this iterative process, copyrighted information is read, analyzed and noted for possible use in the presentation.

The day of the presentation arrives. The presentation is live, face-to-face in a classroom using illustrations from magazines, five seconds of a TV or radio ad, and graphs and charts from books. Each item used in the presentation is copyrighted; it is used in the classroom as part of the learning process. It is a LEARNING process. This is not business. This is not entertainment. This is education, and it is built around the exemption in the current copyright law which allows for the use of proprietary rights material in an educational setting.

Now, change the venue to a digital network and a PC in a home as part of a distance education class. The student will use the network to search for information as part of the research process in exactly the same way as one would do research in a library with print materials; it is the same information in a different format. The class presentation will be over a digital network using whiteboard, webpages, real audio and a CUSeeMe with a camera. The presentation will incorporate the same copyrighted material. The law governing access to and use of copyrighted material should be the same for the student who creates a presentation for a live classroom or a student at a PC if we are to fully exploit digital networked technologies. The copyright law which acknowledged the benefits to society of exemptions for educational use of copyrighted material needs to be updated and extended.

Some would have it that the copyright law does not need to be updated and, furthermore, that licenses will adequately protect copyrighted material. These are two separate issues. Section 110(2) and Section 106 need to be updated to specifically encompass digital technologies. Licenses do not adequately address the iterative nature of the research process in a digital environment. A student needs to be able to browse a wide range of resources; a library doesn't always have the handbook or article or newspaper column that the student needs, but one can't "license" quickly (or at all) one piece of information. But, more to the point, many licenses are problematic. Here are four which we will not sign because of conditions in the license; hence, this material will not be available to our users. The first license restricts access to terminals "within the library walls." Why would we sign a contract for digital networked information and then restrict use to the library building? Our goal is to extend access for educational purposes to our faculty and students through networks; and, where is the

distant student in this scenario? Another license restricts access to a site or multiple sites if there are multiple campuses (at an increased cost per site). Again, how does this accommodate students who may be anywhere or who may be traveling? A third license states that subscribers “shall not allow for any purpose whatsoever any part to be copied, duplicated, modified, translated, adopted, merged or dissembled.” One could infer that quoting in a presentation is not allowed. And, finally, we turned down a license that limits access by IP range (which we find acceptable) but still requires each user to register and to select a password. We are concerned about issues of privacy to say nothing of the impracticability of each user remembering hundreds of passwords. As these examples demonstrate, the power to license is the power to define terms and ultimately to deny access.

In sum, the current education exemption from proprietary rights allow our students to access and use information as part of their educational process.

New digital networked technologies are now a part of the educational process. In order to continue to adopt and integrate these technologies into distance education—and indeed into the educational process PERIOD—the educational exemption must be updated and expanded.