

March 3, 1999

Sayuri Rajapakse  
Attorney-Advisor  
Office of Policy and International Affairs  
Office of the Register  
United States Copyright Office  
James Madison Memorial Building  
Room LM-403  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Dear Ms. Rajapakse:

I am writing in response to your notice of request for comments entitled "Promotion of Distance Education Through Digital Technologies" (Docket No. 98-12A). AAM is the national organization that has served America's museums and their staffs since 1906.

The following comments echo our earlier response to the U.S. Copyright Office's November request for information and also respond to comments the Office received from various interested parties on February 5. We hope you find the following information on the museum field helpful as you bring your study to a conclusion and draft recommendations for Congress.

#### **Nonprofit Educational Institutions**

Our country's art museums, natural history museums, historical sites, historical societies, science and technology centers, arboretums, planetariums, children's museums, zoos, and botanical gardens house an enormous wealth of information for scholarly research and public education -- more than 700 million objects and associated documentation of our cultural, artistic, and scientific heritage. However, a museum at any one time has only approximately five to ten percent of its collection on exhibition and access to objects in storage is necessarily restricted.

Before the advent of the digital age, museums were only able to share their collections with the public in teaspoon amounts to on-site visitors. With the tremendous opportunities afforded in recent years, museums have been

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leaders in developing interactive exhibits and applying new technologies to increase their accessibility through distance education. We have become invaluable resources for classroom teachers seeking to enhance their own understanding of a particular subject and enriching their curriculum for students as well. In this way, "virtual visits" and school programming via satellite, one and two-way video, over the Internet, or with a combination of these and other communications technologies can supplement the more than 865 million actual visits each year to America's museums.

In 1992, AAM issued a landmark policy report, entitled *Excellence and Equity: Education and the Public Dimension of Museums*, reaffirming the central role of education in museums.

To explain the role of museums in education, I can do no better than to quote the report itself: "Museums have a vital place in a broad educational system that includes formal institutions such as universities, schools, and professional training institutes and informal agents of socialization such as the family, workplace, and community. Museums have the capacity to contribute to formal and informal learning at every stage of life, from the education of children in

preschool through secondary school to the continuing education of adults. They add a tangible dimension to learning that occurs in formal settings.”

The federal government for many years has recognized museums as critical participants in the education of our citizenry. In the specific area of distance education, for example, museums have participated in over fifty Department of Education Technology Challenge grants. The Department of Commerce’s National Telecommunications Information Administration also has recognized museums as educational institutions with numerous grants to support distance education programs. In addition, museums specifically are included in the definition of educational institutions in the *Proposed Educational Fair Use Guidelines for Digital Images*, a product of the Conference on Fair Use in which the Office facilitated discussions.

We therefore urge you to keep in mind that when the Office makes policy recommendations with regard to nonprofit educational institutions, such recommendations include museums. With regard to distance education, we strongly assert that museums, as educational institutions, ought to be able to avail themselves of any updated distance education exemption.

### **Fair Use**

If museums and ultimately the general public are to realize the tremendous educational potential of new technology, the “fair use” doctrine

must continue to be an essential component of copyright law and should in no way be replaced or preempted by any specific exemption for distance education. Museums have traditionally relied on “fair use” for a multitude of educational purposes. Especially for museums that collect contemporary works in which they often do not hold the copyright, the vitality of “fair use” will directly affect their ability to carry out their missions, whether it is reproducing these works as illustrations in publications, as slides shown in auditoriums, as digitized images in collections management systems, or in innovative distance learning programming for children and adults alike. Museums also perform significant library and archival functions that require the flexibility that “fair use” provides. Museums’ ability to continue to rely on “fair use” in the digital environment is critical if we are to achieve greater public access to the wonderfully rich and diverse body of resources museums preserve and protect.

### **Licensing**

Museums depend on the revenue from copyright ownership to support their educational, dissemination, and preservation missions. Put another way, they depend on a reliable source of revenue from their copyrighted collections to support their equally important stewardship responsibility. Licensing facilitates this process but should not be used as a justification for recommending against an expanded distance education exemption. On the other hand, the burdens sometimes encountered in the permission-seeking process should not be used as a justification for an exemption which is overly expansive.

We support the use of copyright ownership to enable publishers, creators, and owners to secure reasonable returns on investments in intellectual products and to sustain their enterprise. In addition, the management of rights should encourage a reasonable balance between the cost of permission seeking and the use for which permission is sought.

In addition to the rights and reproductions functions within individual museums, the museum community also is embarking on several digital licensing projects to facilitate educational uses by students, teachers, and life-long learners alike. For example, the Museum Digital Library Collection (MDLC), an AAM affiliated nonprofit organization, plans to develop programs and policies that will encourage students, scholars and researchers to explore how digitized museum collections can be integrated into their work in new ways, including helping educational institutions gain unparalleled access to museum collections by helping to fund the digitizing of museum materials. By serving as a central body to negotiate and supervise site licenses with educational institutions, the MDLC will make the process of licensing and distributing museum materials more efficient and economical.

In closing, with the growth of the Internet, museums are increasingly pressed to make available catalogues, collections, digital archives, and education programming via various communications technologies; simultaneously, they are challenged to manage intellectual property, facilitate transactions, and prevent the unauthorized use of copyright protected works. New technology affords museums exciting opportunities to increase public availability to the treasures they hold in the public trust, but it also poses the danger that museum materials will be copied in unauthorized ways, in infinite number, and sent around the world with little effort. As both owners and users of works protected by copyright, museums have a strong incentive to strike a balance between these interests. As the Office drafts its recommendations to Congress on promoting distance education through digital technologies, we encourage it to be faithful to the oft-cited principles of balance inherent in U.S. Copyright law.

Finally, I want to thank you for your consideration of these comments.

Sincerely,  
Edward H. Able, Jr.



President and CEO

cc: W. Richard West, AAM Chairman of the Board  
Patricia E. Williams, AAM Vice President, Policy and Programs  
Barry G. Szczesny, Esq., AAM Government Affairs Counsel