

[Proposed class or classes of copyrighted work(s) to be exempted]= Class One:
Audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use.

Class Two:
Derivative and collective works which contain audiovisual works that are in the public domain and that are protected by technological measures that prevent their educational use.

[Brief summary of the argument(s) in support of the exemption proposed above]= Film and media studies is a valuable and expanding field. Integral to these educational programs is the actual study of actual films. In order to teach new generations of film critics, film historians, producers, directors, and others, professors show their classes clips from existing films. Just as it is preposterous to think of trying to teach art studies without displaying high quality reproductions of real paintings, it is unthinkable that film and media education could exist without students being shown high quality clips of films. Typically, a professor will show a number of short clips in a single class, as a way to facilitate discussion and academic debate. It is not the practice to distribute these clips, but only to show them to students during class. This use of film clips in film studies education is a legitimate fair use of copyrighted materials under section 107 of the Copyright!

t Act. 17 U.S.C. * 107 (2000)

As technology evolves, fewer and fewer films are available in analog formats, while the ever increasing digitization of the classroom environment rewards the use of high quality digital media. This has encouraged film study professors to rely on Digital Versatile Discs (*DVDs*) to obtain the clips they want to use in class, especially as universities phase out analog technologies. [Statement of Peter Decherney, Assistant Professor of Cinema Studies, University of Pennsylvania (Hereinafter *Decherney Statement*), Appendix A]. The movie industry uses digital rights management (*DRM*) to control access to copyrighted material. Specifically, the encryption method known as Content Scrambling System (*CSS*) is embedded within DVDs, which effectively prevents various manipulations of those DVDs, has been characterized as an access control measure under section 1201 of the Digital Millennium Copyright Act (*DMCA*). See 321 Studios v. MGM Studios, Inc., 307 F. Supp. 2d 1085,

1095 (D. Cal. 2004). The law is not entirely settled as to the question of whether CSS is an access control measure, a copy control measure, or both. See Generally R. Anthony Reese Symposium: The Law and Technology of Digital Rights Management: Will Merging Access Controls and Rights Controls Undermine the Structure of Anticircumvention Law?, 18 Berkeley Tech. L.J. 619 (2003). Given this uncertainty, this comment will concentrate on seeking an exemption on the assumption that CSS will be considered an access control measure, at least in part. In that case, film and media professors who wish to use clips from audiovisual works on DVD are left with few choices: to forgo use of the clips, to circumvent CSS, or to create crude replicas of the high quality originals. The same copyright laws that protect the creativity of movies also restrict the viewing of these films in educational forums. Warner Lieberfarb, former president of Warner Home Video and on one of the le!

ad developers of the DVD stated, *DVD encryption was never meant to in
terfere with education.* Thus the applicants now seek permission, in the form of the requested exemptions, to lawfully create compilations of clips from DVDs and exclusively showcase these during the teaching of their courses.