

**BEFORE THE LIBRARY OF CONGRESS
COPYRIGHT OFFICE**

**IN THE MATTER OF
EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT
PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES
Docket Number RM 2005-11**

**REPLY COMMENT IN SUPPORT OF CERTAIN REQUESTED EXEMPTIONS
SUBMITTED ON BEHALF OF THE ANNENBERG SCHOOL FOR COMMUNICATION
At The UNIVERSITY OF PENNSYLVANIA
By the Walter H. Annenberg Dean and Professor of Communication,
Michael X. Delli Carpini, Ph.D.**

The Annenberg School for Communication at The University of Pennsylvania supports the comment submitted by Profs. Peter Decherney, Michael Delli Carpini, and Katherine Sender, each in his or her individual capacity (Comment Document Number 5 available as of January 26, 2005 at <http://www.copyright.gov/1201/2006/comments/index.html>).

First Class of Copyrighted Works Proposed to be Exempted:

Audiovisual works which contain access control technologies which prevent access by educators to clips of the audiovisual work for use in teaching and research.

Summary, and Factual and Legal Argument:

The proliferation of access control technologies, such as content scrambling system (“CSS”), embedded within the digital versatile disc (“DVD”) format of audiovisual works, such as movie films, has severely limited the ability of educators to effectively teach media studies to students. To effectively teach media students, a teacher must access and show small portions (or “clips”) of audiovisual works to his or her students. An instructor showing short clips from audiovisual works protected by copyright, to students as part of a legitimate course of study or as part of legitimate academic research, is a fair use of the audiovisual work. 17 U.S.C. § 107. However, access control mechanisms, such as CSS, severely limit and, in some cases, effectively prohibit, the ability of a teacher to make a fair use of the copyrighted work by showing clips in a classroom setting. The teacher is forced to forego use of that clip; use inefficient “workarounds” in advance of the class to re-record the desired portion of the underlying audiovisual work, resulting in a degradation in the display of the original material that negatively effects the teaching; or risk violating the law by circumventing an access control technology. The Annenberg School for Communication does not believe that Congress intended this result, nor the practical, negative effect the law is having on teaching and research in the media studies disciplines, and respectfully suggests that Congress granted the Copyright Office the ability to exempt certain works where the result is an otherwise unacceptable limitation on the ability to make a fair use of a copyrighted work, and a limitation on the advancement of education in the United States.

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Thus, for the factual and legal reasons set forth in the Comment submitted by Profs. Decherney, Delli Carpini, and Sender, the Annenberg School for Communication at the University of Pennsylvania, supports their request for an exemption for this class of works from the prohibition against circumvention of access control technologies, such as CSS, when the purpose is to make use of the underlying audiovisual work for what would otherwise be a fair use under existing copyright law.

Second Class(es) of Copyrighted Works Proposed to be Exempted:

Derivative and collective works which contain audiovisual works that are in the public domain and which contain access control technologies that prevent access by educators for use in teaching.

Summary and Factual and/or Legal Argument:

The arguments to exempt derivative works and collective works that contain public domain materials, such as audiovisual works that are no longer protected by copyright, may be even stronger than the arguments to exempt audiovisual works still protected by copyright. Teachers and researchers should have unfettered access to public domain audiovisual works for their educational, teaching and scholarly purposes. By adding enough new copyrightable, original material to a work to create a derivative work, or to a collection of works to create a copyrightable collective work, an author (in practical terms, usually a large movie production studio or distribution company) should not be able to effectively deny a teacher the ability to access the underlying public domain material, particular in a field such as media studies where new digital copies of otherwise out-of-print works often are crucial in order to make effective use of the original out-of-print or historical work, or to compare an original with, e.g., a “colorized” version of the public domain original work.

Thus, for the factual and legal reasons set forth in the Comment submitted by Profs. Decherney, Delli Carpini, and Sender, the Annenberg School for Communication at the University of Pennsylvania, supports their request for an exemption for derivative and collective works of otherwise public domain audiovisual works, from the prohibition against circumvention of access control technologies.

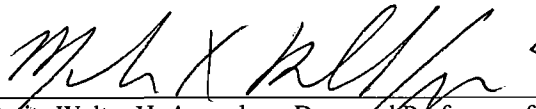
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Respectfully submitted,
THE ANNENBERG SCHOOL FOR COMMUNICATION
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