



September 8, 2009

Rob Kasunic  
Copyright Office  
Library of Congress  
Washington DC

Re: August 21 Supplemental Questions to DVD-Related Hearing Panelists

Dear Mr. Kasunic:

Thank you for inviting the input of media literacy educators in this rulemaking process. The question you presented signifies an effort to formulate 1201 exemptions that appropriately balance the interests of educators, filmmakers, and copyright holders. While I recognize that the possibility of duration or percentage limitation on an exempted class of works reflects an attempt to reach a mutually acceptable solution to all interested parties, in practice such limitations would not provide any additional protection to copyright holders and would hinder teachers and students in the media literacy community.

A narrow duration or percentage restriction on the use of a CSS-encrypted works would significantly limit the scope and effectiveness of media literacy education. Media literacy educators do not only use CSS-encrypted DVDs to analyze feature length films, but also to study much shorter works including, movie trailers, creator's commentary, commercials, and short films. With these shorter works, it is often necessary for educators to show one-hundred percent of the work in order to accomplish a particular instructional goal. For full-length films, in contrast, it is not necessary to show the entire work, but an educator may need to show a longer clip to support a subsequent hands-on student learning experience. Close reading may require multiple screenings over several days. Thus, any quantitative restriction should be measured by usage of a *DVD per individual class session* due to the variety of works that an educator may show throughout the semester. Additionally, any proportional restriction should provide educators with the flexibility of using up to either seventy-percent or ten minutes of a DVD per individual class session in order to extract pedagogical value from audiovisual works.

Additionally, the imposition of an ill-conceived duration or percentage restriction would stifle the creative pedagogical choices available to media literacy educators and students. Media literacy teachers adjust the length and types of works used in class to reflect the subject matter of the course, their instructional goals, and the needs of their students. For example, a class focusing on the portrayal of Latinos might show short clips that compare the representation of Latino people across multiple works, while another class might require students to watch a longer segment of a single work to study the development of themes and characters. Brightline quantitative restrictions would limit the creative choices of media literacy educators and students. Finally, it is important to recognize that the practices of media literacy educators are constantly evolving. In particular, media literacy education at the K-12 level is in its infancy, and educators are working diligently to develop innovative teaching methods to engage young students. It would be a travesty if the Copyright Office imposed a usage restriction that stifles the educational aspirations of teachers and students.

Beyond the harm that restrictions would impose on educational innovation, a brightline usage restriction would be difficult for media literacy educators to apply in a consistent manner. Any proposed regulation must recognize the great variation that exists in the content of CSS-encrypted DVDs. While some CSS-encrypted DVDs contain only a single audiovisual work, such as a feature film, many others contain compilations of individual works, such as a movie trailer, creator's commentary, and a short film that are all encompassed in one CSS-encryption. The variation among the content of an entire DVD will make it difficult for educators to apply a consistent quantitative restriction. Should a proportional restriction apply to the entire running time of the DVD, it would be extremely burdensome for the educator to count all of the running minutes of the DVD in order to determine the overall playing time, since many segments do not have a running time indicated. On the other hand, if the restriction applied to each individual work on the DVD compilation, educators would lose the value of many shorter works that students must view in their entirety to support the learning process. Any proposed rule should be comprehensible and applicable, and a proportional limitation on DVDs does not lend itself to such goals.

Finally, past attempts to impose quantitative restrictions indicate that educators and their gatekeepers would likely seize on the 1201 exemption numbers and apply them in ordinary fair use analysis. The negative effects of applying quantitative standards to this field are evident by the unintended ramifications of the educational use guidelines,<sup>1</sup> which attempted to help educators understand and apply fair use in copyright. In practice, the educational use guidelines can interfere with educators' understanding of copyright law because teachers often misread the guidelines as rigid "rules" for the application of fair use. Like the educational use guidelines, duration or percentage restrictions in 1201 exemptions are likely to be misread as imposing strict categorical limitations on fair use. This "slop-over effect" of the anti-circumvention rules may only produce further confusion and misinformation about copyright law among educators and students.

I appreciate your efforts to understand how quantitative limitations would affect media literacy educators and students. I hope that the information and examples I provided illuminate the negative impact that duration or percentage restrictions would have on both educators' and students' understanding of the law, as well as, efforts to educate students in both K-12 environments and in higher education.

Respectfully submitted,

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<sup>1</sup> Conference on Fair Use, *Fair Use Guidelines for Educational Multimedia*, April 1997, available at <http://www.washington.edu/classroom/emc/fairuse.html>