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U.S. Copyright Office
Copyright GC/I&R
Library of Congress
Washington, D.C. 20024

Comments submitted by:

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To the Copyright Office:

In 2003, the Library of Congress took a small step toward alleviating a major burden imposed on higher education by the anti-circumvention provisions of 17 U.S.C. 1201(a) when it defined as an excepted class of works those digital version of motion pictures that are distributed on DVD format that are used by film and media studies professors to create compilations of clips for use in face-to-face teaching. It is now time for the Library to extend the relief offered by that exception to other college and university faculty, who clearly are well able to demonstrate that they too are adversely affected in their routine pedagogical and non-infringing use of video in the classroom and that no reasonable substitute for this vital teaching material is available to them. On behalf of many of our faculty who need to use this content to create compilations of film clips, Duke University requests that the Librarian of Congress renew this exception for the next rule-making period and extend it to allow all college and university instructors to make compilations of film clips from lawfully made DVDs to use in classroom teaching.

Duke University is one of the world's most renowned centers for research, teaching and learning. As an institution, Duke has undertaken a major focus on visual culture as part of its educational mission. The skills for creating and interpreting visual messages and visual culture will be, and, in fact, already are, vitally important for scholars and citizens in all fields of endeavor in the 21st century. It is for that reason that Duke wishes to press for the ability of teachers in all disciplines to make those compilations of film clips that are a necessary component of a complete education across the curriculum.

The examples provided in this letter will show, we believe, that the need for this broadened exception really does exist across all the disciplines in a university or college curriculum. They also show that the current scope of the exception as it was adopted in 2003 is unreasonably restricted, arbitrary and difficult to apply. That it is unreasonably restrictive is shown by the fact that many professors who have sound pedagogical need to use film clips in their classes simply do not fall within the scope of “film and media studies” professors. That it is difficult to apply is demonstrated by the cases of professors who teach film classes in departments other than those labeled “film and media studies.” These faculty simply do not know whether they are entitled to avail themselves of the exception as it now exists, although it is abundantly clear that allowing them to do so would have the same beneficial effect that the exception was intended to offer and would create no hardship or threat to content owners. Finally, the arbitrary nature of the current exception is shown by the case of a faculty member who holds appointment at two universities where she teaches the same class; at one of these institutions the exception as it stands applies to her but at the other it does not. There is no logic that could justify this result.

The following six examples, all drawn from conversations with professors at Duke University, provide the strongest argument for the assertions above and make the case for the expansion of the exception to the anti-circumvention rules that is herein request.

- Dean Sarah Deutsch, Professor of History and Dean of the Social Sciences at Duke, teaches several classes in which film clips are a prominent part of her pedagogy. In her “History of the U.S. West,” for example, she juxtaposes two versions of the same scene from “The Virginian” to help her students understand changing representations of the American West in general and the Johnson County war in particular. Dean Deutsch says of this lesson, “the students can see both how popular presentations of the west shape their own attitudes and how these presentations vary with current major issues, so that the west becomes a blank slate on which to write a desired history.” Clearly, Dean Deutsch is developing skills in understanding visual culture that cannot be taught as effectively without the film clips she uses. A similar technique informs her class lessons on the US labor movement, where clips from Charlie Chaplin films, from “My Man Godfrey,” and “Meet John Doe” all contribute to a robust discussion of how visual culture shapes popular political perceptions.
- Professor Ara Wilson of Women’s Studies and Cultural Anthropology writes that she uses select scenes from two Thai feature films – “Beautiful Boxer” and “Iron Ladies” to illustrate readings about gender in Thailand. In a course on the global economy, Prof. Wilson uses single scenes from “Network” and “Wall Street” to illustrate the transformative impact of U.S. media on finance in recent decades. Although these lessons are a vital part of her teaching, and an important aspect of critical analysis in the 21st century, Prof. Wilson expresses concern about how much class time must be wasted trying to locate each segment in a DVD, as well as the reduced pedagogical impact when she cannot place the clips side-by-side. Prof. Wilson says she has even substituted a clip found on YouTube of an

interview with Ayn Rand for a segment of a documentary about the philosopher because using the video clip under the present rules is simply too unwieldy. This, then, is an example of a professor forced into a less satisfactory teaching method because of an arbitrary rule.

- Professor Orin Starn (Cultural Anthropology) uses clips from several different movies in his class on the Anthropology of Sports, a subject where media representations are obviously an indispensable part of the learning experience. “For example,” he says, “I might show five minutes of ‘A League of Their Own’ and the same [amount] of ‘A River Runs Through It,’ one to illustrate issues of women and sports, the other to raise questions about fly-fishing and its connection to the American West and to male identity. Again, there seems to be no principled reason to impose the burden of using multiple DVDs, with their time-consuming mechanism for finding specific scenes, on Prof. Starn but not on other faculty, simply because of their departmental affiliation.
- Professor Kathy Rudy, who works with Duke’s Center for Bioethics, Humanities and the History of Science, also uses a lot of film clips in her teaching around animals and ethics. In her upcoming class she will use clips from “Jane Goodall’s Wild Chimpanzees,” “Gorillas in the Mist,” Ape Genius” (Nova), “Chimps: An Unnatural History,” “The Ape So Human,” and “Planet of the Apes.” It is important to realize that animal ethics is a subject in which film is an indispensable medium for presenting behaviors and ethical dilemmas to students, and Prof. Rudy, like so many of her colleagues, is concerned about the amount of class time spent “switching and searching.”
- Dr. Jennifer Brody teaches “Black Independent Cinema” in the African & African-American Studies department. She would like to use clips of same piece of film as it has been incorporated into several different movies in order to show how filmmakers can alter the representation of an event, even using the same footage. But it is not clear, given the narrow wording of the present anti-circumvention exception, whether Prof. Brody, teaching a film class in a Social Sciences department, falls within the definition of a film and media studies professor. Unfortunately, Prof. Brody elected to leave this lesson out of her class this semester because of uncertainty about her status and eligibility for the current exception. She also teaches a non-film class on Atlantic Studies, and uses short clips from “Beloved,” “The Price of the Ticket” and other films, but is discouraged by the time wasted in class finding each segment in separate DVDs; an exception allowing her to create a compilation would serve same pedagogical needs for her in her African-American Studies classes as it does for film and media studies professors.
- Professor Kacie Wallace, who teaches both at Duke at the North Carolina Central University School of Law, elected to write her own comments supporting this request, and those comments follow. At this point it is sufficient to note the ironic situation in which Prof. Wallace is entitled to exploit the current anti-

circumvention exception for film professors to make a compilation of clips for the class she teaches at Duke, but is not, apparently, allowed the same privilege while teaching the identical course in the NCCU law school. It is hard to imagine a more arbitrary law than one that applies differently to the same professor teaching the same class in two different schools.

Because these examples could be multiplied virtually without end, Duke respectfully asks that the Registrar of Copyright and the Librarian of Congress consider an exception to the anti-circumvention rules that would allow faculty at colleges and universities of any discipline to circumvent technological protection measures to create compilations of film clips from lawfully-made DVDs for use in face-to-face teaching. The class of work here requested for exemption is one of the section 102 categories of authorship – 102(6) to be specific – and that class would be further refined in the proposed exception by a limitation as to user (college and university teachers), as to use (compilation of clips for face-to-face instruction), and as to source (lawfully made DVDs). The use suggested for this exception is clearly non-infringing, since the copying of small amounts for this educational purpose is a classic instance of fair use, and the classroom performance itself is specifically authorized by section 110(1). It should also be clear that no legitimate market for the original films would be harmed by the proposed exception; lawful copies would have to be obtained, and there is no market that could anticipate or replace the individual pedagogical judgment of faculty as to which short clips to juxtapose for their specific teaching purposes. Finally, it is important to note that there is usually no non-digital alternative for any of the professors whose teaching is described above. For many recent films, there is no release for public purchase in any format other than DVD (which is usually encrypted), and the equipment to play analog video formats is increasingly unavailable to classroom teachers.

Both Professors Brody and Wallace, whose teaching dilemmas are outlined above and in the comments appended below, have indicated their willingness to testify at public hearings in Washington, DC when such hearings are scheduled. Notification and arrangements for such testimony can be made through the submitter of these comments, Kevin L. Smith.

Thank you for considering this request for an expanded exception to the anti-circumvention rules for classroom clips, and for your willingness to understand the hardships imposed on teachers all over the country by the current, unnecessarily narrow, exception.

Additional comments by

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To Whom It May Concern:

The following is provided in response to the Copyright Office's call for comment as it engages in the triennial review of Section 1201(a)(1) of the Digital Millennium Copyright Act (DMCA) regarding temporary exemptions to the ban on circumventing technological measures that control access to copyrighted works.

My comment requests an extension and broadening of current exemptions and provides evidence that failure to do so would (and does) adversely affect noninfringing uses of copyrighted works in the educational context. My circumstance is unique in that I teach similar topics at different universities and through different departments. As a professor in Duke University's Film, Video and Digital Department, I am able to cut and compile clips to teach students about global conflict and different cultural methods of resolution in a course called, "Conflict, Resolution and Film." As a law professor and supervising attorney at North Carolina Central University (NCCU) in the field of dispute resolution, there is no exemption that permits me to circumvent the encryption of copyrighted works and compile film clips to enhance my ability to teach students to effectively manage and resolve conflict. For this reason, I am requesting that the temporary exemption addressing "audiovisual works in the course of face-to-face teaching activities of a film or media studies course" be extended and expanded to include *all* college and university faculty and allow the broad use of short portions of motion pictures or other audiovisual works in the course of face-to-face teaching activities.

At both Duke and NCCU, my dispute resolution curriculum combines a skills based training component with a theoretical framework for understanding conflict and its management. In an effort to apply skills and theory to practice, students examine current affairs, literature, and film and engage in role-plays and simulation exercises that mimic real-world conflicts. The value in this practice depends upon effectively simulating conflict conditions. Film is a powerful tool in this regard. It engages people on intellectual and emotional levels and can connect students to the personal stories of individuals in conflict. It can influence and inform, in addition to entertain. Film can take its viewers into different realities, allow an experience close enough to engage deeply yet distant enough to allow space to think and dialogue, to consider appropriate responses and to practice various interventions.

To illustrate the need for expansion of the DMCA circumvention exemptions, please consider how I can legally use short portions of copyrighted works in the course of teaching students in my film class at Duke University, but under current laws be prohibited to do the same for law students in my dispute resolution courses at NCCU School of Law.

In each conflict resolution course, I teach a segment on “reframing” in which I offer students a volatile or negative statement typical in the context of interpersonal conflict and ask them to reframe the statement in a more neutral, positive and constructive way—a skill critical to changing the dynamic of destructive communication. For my film students, I am able to compile a series of very short clips from a wide range of movies and after each clip ask them to practice the art of reframing. Unfortunately, I am not able to legally produce such a compilation in the context of my law classes.

In the context of family law mediation, students are able to observe the pain, emotional out-lashes and potential reconciliation between a divorcing husband and wife through scenes from *Kramer vs. Kramer*. Following each clip in which Meryl Streep and Dustin Hoffman’s characters fight over their divorce and custody of their small child, I ask students to envision themselves as mediators in this conflict and rehearse strategies and responses for intervention. The ability to compile relevant clips in a way that is easy to start and stop provides a rich opportunity for students to engage in the stress and emotion of such a difficult situation.

When studying the tragedy of massive human rights violations, students view a compilation of clips of stark images of death from concentration camps of the Holocaust in *Night and Fog* and the similar genocide in Sudan as photographed by former U.S. Marine Captain Brian Steidle and shown in *The Devil Came on Horseback*. I then illustrate different cultural models of addressing such atrocities by showing a compilation of clips of legal proceedings from films such as *Verdict on Auschwitz* and *The Nuremberg Trials*. Together with clips from the South African Truth and Reconciliation process in *A Long Night’s Journey Into Day* and *In The Tall Grass*, depicting the “gacaca” process designed to promote healing and reconciliation between Hutus and Tutsis following the Rwandan genocide, students are able to appreciate a wide range of processes for holding war criminals accountable and reconciling broken communities.

To demonstrate the effective use of film as evidence in war crimes, human rights violations or domestic criminal activity, students view a series of clips from *In Search of International Justice* (about the newly formed International Criminal Court’s commitment to the international rule of law), *The Thin Blue Line* (a film by Errol Morris in which he investigates and re-enacts the 1976 murder of a Dallas police officer by interviewing multiple parties and ultimately reveals injustices in the judicial system) and *Four Women* (a film shown during a Brazilian Court’s public hearing to government officials and civil society representatives regarding abortion laws and how they affect pregnant women expecting anencephalic infants). With such a compilation, students are able to consider these short clips in contrast to one another and evaluate the utility of film as evidence in legal proceedings.

Finally, one of most critical components to effective legal arguments, negotiation and conflict resolution is empathetic storytelling such that parties on both sides of a conflict can understand and appreciate the other's perspective. Such storytelling is illustrated to students with a compilation of clips from *Meeting Resistance* (a rare glimpse into the hearts and minds of Iraqi insurgents), *To Die in Jerusalem* (revealing the complexity of the conflict between Israelis and Palestinians when two mothers confront each other after a 17-year-old Palestinian girl ignites a suicide bomb killing herself and a 17-year-old Israeli girl) and *Two Towns of Jasper* (a collaborative effort between a black and a white filmmaker, with segregated crews, to document the sentiments throughout town of Jasper, Texas, during the course of the murder trials of three white men charged with dragging a black man, Mr. Byrd, to his death).

With each of these examples, through current DMCA exemptions I am able to circumvent copyright protection systems in order to produce compilations for my film students at Duke, but unable to legally produce similar compilations for my law students at NCCU. As an educator, it seems ineffectual that laws create this predicament merely based on the department of my faculty appointments.

Film opens students up to new ideas and challenges them to consider alternate perspectives and interpretations of the world around us. It is my hope that with the above evidence, you can appreciate how using compilations of short film clips creates new possibilities for students to master material taught in the classroom. With broader exemptions to the DCMA that would allow all college and university faculty to circumvent technological measures that control access to copyrighted works, it would be possible to engage in the fair use of film clips in varying lengths and in multiple contexts, thereby deepening students' ability to learn. This practice would not devalue the creative work in any way and, in fact, would enhance its value through the transformation from entertainment to education.

I would appreciate the opportunity to speak to the need for these exceptions at the public hearing before the Library of Congress this spring. Thank you.