

Comments from:

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Comments against the position of Fred von Lohmann and Jennifer Granick of the Electronic Frontier Foundation, which seeks as is second proposed class or classes of copyrighted work(s) to be exempted (#11A): "Audiovisual works released on DVD, where circumvention is undertaken solely for the purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright."

Should the copyright laws be amended to give special exemptions to particular persons or classes of creator? Fred von Lohmann and Jennifer Granick of the Electronic Frontier Foundation argue for such special considerations when they write that amateur makers of online videos "lack of access to sophisticated copyright counsel." Although they acknowledge that "[s]ome remix videos doubtless infringe copyrights," they propose a change to copyright law that will leave "room for this kind of 'remix culture.'" They write: "The proposed exemption is limited to noncommercial remix video creators, the group that is most like to lack access to legal advice in advance of creating their videos."

I contend that any change that proves advisable should apply equally to commercial and noncommercial creators. Noncommercial creators are not as bereft of advice as the Electronic Freedom Foundation would have others believe. The Copyright Office provides a substantial number of brief but informative circulars and brochures, subdivided into a number of delimited subjects, at <http://www.copyright.gov/circs/> (and elsewhere at <http://copyright.gov/>). Commercial web sites such as <http://chart.copyrightdata.com> allow anyone with an internet connection to get answers on major and minor aspects of copyright law by answering successive questions in a question tree, and then to follow up on those answers by consulting the sources given in the citations provided.

It can be argued that the copyright laws on fair use are sufficiently vague that noncommercial video creators will not know how much of a copyrighted work can be incorporated into a new work under the doctrine of fair use and thus these creators require copyright counsel. It is certainly true that dividing lines on fair use are vague. However, the solution to this are better rules or legal guidelines. Over the course of decades or century, authors and publishers of scholarly monographs and general-readership nonfiction texts have learned to limit themselves to brief excerpts that do not upset the copyright holders of the works from which they select. The Supreme Court verdict in *Harper & Row v. Nation Enterprises* (471 U.S. 539 (1985)) and circuit court decisions such as *J.D. Salinger v. Random House, Inc. and Ian Hamilton* (811 F.2d 90 (1987)) have taught conscientious writers and publishers what they may and may not excerpt. What video creators and corporate owners of audio and video copyrights need is a comparable court decision concerning fair use when excerpting film, video and sound recordings. Such a verdict or verdicts should apply equally to commercial and noncommercial creators.

I contend that the copyright laws should not create special permissions for noncommercial users

apart from those accorded all other classes of users, including corporations. Spokespersons for nonprofessionals have already shown that they will abuse any privileges they deem themselves to have. The Internet is full of statements by private individuals who claim that the Supreme Court verdict in *Sony Corp. v. Universal City Studios, Inc.* (464 U.S. 417 (1984)) gives homeowners the right to build libraries of off-the-air video recordings when in fact the Court merely determined that time-shifting was a fair use, specifically stating that their verdict does not rule on library-building. The Internet contains statements that the Audio Home Recording Act of 1992 (Public Law No. 102-563) gives private individuals rights to make copies that are neither mentioned nor can be inferred from the text of the law. Noncommercial users have shown that when given an inch, they will take a mile.

In the “Interview with an anonymous vidder” included as Appendix C to the submission of Fred von Lohmann and Jennifer Granick of the Electronic Frontier Foundation, the text refers to those “who came of age with the Internet, and who have no sense of the legal restrictions that may affect their hobby. These are the people the rest of us tend to worry most about, in terms of potential legal liability.” A solution to this dilemma may be for such people to develop the “sense of the legal restrictions” they have until now been unwilling to.

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