

**Re: Proposed exemption to the prohibition on circumvention
of copyright protection systems for access control technologies**

Docket No. RM 2008-8

Comment of:

Denis Doyon
Director of Media Production
New Mexico Media Literacy Project
Albuquerque NM

In support of the comment of:

Renee Hobbs
Professor of Broadcasting, Telecommunication and Mass Media
Founder, Media Education Lab
Temple University
Philadelphia PA

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Proposed classes of copyrighted work(s) to be exempted:

Class 4C: Audiovisual works that illustrate and/or relate to contemporary social issues used for the purpose of teaching the process of accessing, analyzing, evaluating, and communicating messages in different forms of media.

Class 4D: Audiovisual works that illustrate and/or relate to contemporary social issues used for the purpose of studying the process of accessing, analyzing, evaluating and communicating messages in different forms of media, and that are of particular relevance to a specific educational assignment, when such uses are made with the prior approval of the instructor.

Summary of the argument in support of the exemptions proposed above:

1. Relevance of 17 U.S.C. Sec. 1201 to commenter's work.

The New Mexico Media Literacy Project (NMMLP), founded in 1993, is one of the oldest media literacy organizations in the United States. Our mission is to cultivate critical thinking and activism in our media culture to build healthy and just communities.

Media literacy education involves the close analysis of media messages to build critical thinking and communication skills. Common instructional activities include comparison-contrast analysis, deconstruction of the form and content of a message, illustration of

key points, and examination of the historical, economic, political, or social contexts in which a particular message was produced and is received.

The New Mexico Media Literacy Project produces multimedia teaching resources that are used in classrooms across the country. Our DVD-ROMs, CD-ROMs, and videos include excerpts from a wide variety of media messages, including clips from movies and television shows available on DVD, along with discussion questions or lesson plans focused on the media examples. Our DVD-ROM *Something Stinks in Hollywood!*, for example, includes more than 50 scenes from recent Hollywood movies that feature tobacco use, in order to examine how tobacco use is portrayed (and many would say promoted) in youth-rated movies. Our DVD-ROM *Media Literacy Toolbox* uses clips from movies and television programs, among other media examples, to teach media literacy concepts, skills, and applications.

NMMLP also delivers media literacy presentations and trainings using our DVD-ROMs and CD-ROMs, as well as Keynote™ or PowerPoint™ presentations that include clips from movies and television shows available on DVD. These presentations and trainings take place in classrooms, school assemblies, professional conferences and other venues, for the purpose of teaching media literacy concepts, skills, and applications.

More information about NMMLP's work is available at <www.nmmlp.org>.

2. NMMLP's use of clips from movies and television shows available on DVD is protected by Fair Use.

NMMLP's use of copyrighted materials in the production of multimedia educational resources, and in our educational presentations and trainings, unquestionably is allowed by the Fair Use provision of US copyright law (17 U.S.C. § 107). The New Mexico Media Literacy Project is an outreach project of Albuquerque Academy, a not-for-profit, tax-exempt independent school (grades 6-12) in Albuquerque NM. Our media literacy presentations, trainings, and multimedia resources are intended for nonprofit educational use. They use small excerpts of individual movies and television programs, and only a small portion of each presentation or resource consists of material from a specific copyrighted work. In addition, our use is transformative, and our presentations, trainings, and multimedia resources are designed specifically for purposes of analysis and criticism. NMMLP has been conducting media literacy presentations and trainings, and producing and distributing multimedia educational resources, using clips from movies and television shows (among other media examples) for over fifteen years, and we have never received a complaint from a copyright holder.

3. The New Mexico Media Literacy Project is adversely affected by 17 U.S.C. Sec. 1201(a).

Section 1201(a) of the Digital Millennium Copyright Act (DMCA), unfairly restricts NMMLP's lawful educational work. In the terms of 17 U.S.C. Sec. 1201(a)(3), Content Scrambling System technology (CSS) "effectively prevents" NMMLP from lawfully "gain[ing] access" to media clips on DVDs in order to produce noninfringing multimedia educational resources.

NMMLP has occasionally been prevented (for technological reasons and concerns for legal liability) from using movie clips from DVDs protected by CSS. Where NMMLP has used television and movie clips from DVDs protected by CSS in order to produce noninfringing multimedia educational resources, we have incurred potential legal liabilities under the DMCA.

In addition, the DMCA may create actual or perceived legal liabilities for NMMLP and its subcontractors (including commercial DVD-ROM, CD-ROM and video duplicators, and authorized distributors of NMMLP educational resources) with respect to the duplication and distribution of these educational resources.

The DMCA may also create actual or perceived legal liabilities for teachers, public health educators, youth group leaders and others who use NMMLP's multimedia educational resources. We know of several instances where teachers or administrators declined to purchase and/or use our multimedia educational resources because of school policies barring use of audiovisual materials that appear to violate provisions of the DMCA, or because they feared for their individual or institutional liability. We suspect that many more teachers and administrators decline to purchase and/or use our multimedia educational resources without informing us.

To the extent that these concerns reduce sales of our multimedia educational resources and/or our ability to deliver media literacy presentations and training, the DMCA adversely affects NMMLP's ability to fund its operations; product sales and honoraria account for more than half of NMMLP's annual budget. More important, by denying students access to NMMLP's multimedia educational resources, the DMCA adversely affects NMMLP's ability to carry out its mission: Cultivating critical thinking and activism in our media culture to build healthy and just communities.

4. Exemptions to DMCA restrictions would benefit NMMLP, teachers, students and others.

NMMLP, its subcontractors, teachers, school administrators and others would be protected by a DMCA exemption for Class 4C: Audiovisual works used for the purpose of teaching media literacy.

Students using NMMLP educational resources would be protected by a DMCA exemption for Class 4D: Audiovisual works used for the purpose of learning media literacy.

5. DMCA exemptions for these classes of works is important for media literacy education.

Media literacy is an essential skill for the 21st century. By its very nature, it requires using primary materials protected by copyright as the basis for examination, discussion and evaluation. Leading organizations in the field, including the Action Coalition for Media Education, Media Education Foundation, National Association for Media Literacy Education, National Council of Teachers of English, and the Visual Communication Studies Division of the International Communication Association, recently released a “Code of Best Practices in Fair Use for Media Literacy Education”, available at <www.centerforsocialmedia.org/medialiteracy>. This statement represents the media literacy education community’s current consensus about acceptable practices for the fair use of copyrighted materials.

We believe that the Digital Millennium Copyright Act of 1998 inappropriately restricts our ability to employ these best practices to produce quality teaching resources for students, and denies students access to these teaching resources for media literacy education.