

CLASS 4
Short Comment Regarding a Proposed Exemption
Under 17 U.S.C. 1201

Item 1. Commenter Information

Renee Hobbs
Professor of Communication Studies
Founder, Media Education Lab
Harrington School of Communication and Media
University of Rhode Island
Kingston RI
hobbs@uri.edu / @reenehobbs

Signatories:

Library Copyright Alliance
Members include the American Library Association, the Association of Research Libraries, and
the Association of College and Research Libraries
Jonathan Band, Attorney
jband@policybandwidth.com

Sherri Hope Culver
Former President, National Association for Media Literacy Education (NAMLE)
Professor, Temple University
School of Communication and Media
Philadelphia PA
shculver@temple.edu

Philly CAM: Philadelphia Public Access Center
Gretjen Clausing, Executive Director
gretjen@phillycam.org

Media Literacy Now, Inc.
Watertown, Massachusetts
Erin McNeill, President
erin@medialiteracynow.org

The LAMP NYC
D.C. Vito, Executive Director
dc@thelampnyc.org

Proposed Class Addressed

Proposed Class 4: Audiovisual works – educational uses – educational programs operated by museums, libraries, or nonprofits This proposed class would allow educators and learners in libraries, museums and nonprofit organizations to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for educational purposes. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Statement Regarding Proposed Exemption

Today, what we call “learning” is transforming: it no longer happens only in a classroom. The tertiary sector of education is emerging as a bastion of innovation as new models of informal learning are emerging as a result of the rise of digital media and the Web 2.0. Educators working in libraries, cultural institutions, afterschool programs, and non-profit organizations are **designing-and-curating** rich multimedia artifacts and as learners of all ages take responsibility for their own education by demonstrating their comprehension, knowledge and skills by **making-and-creating** media messages in print, visual, sound, audiovisual, interactive and digital formats.¹

Over the past seven years, the John D. and Catherine T. MacArthur Foundation has invested more than \$150 million in understanding new forms of learning in informal, interest-driven networks that use the powerful new creative and expressive tools of digital media. To understand how learning is changing as a result of the rise of digital media, they developed a research hub at the University of California, Irvine and established other innovative programs such as the YouMedia program at the Washington Public Library in Chicago. Learners come to the library to “hang out, mess around and geek out” and learn how to create and express themselves using digital media tools, including music, video and multimedia. The Digital Media and Learning community (DML) are exploring a new vision of learning that is more engaging, motivating, social and supported by a constellation of mentors, educators, knowledgeable peers and parents.² At the present time, these educators and the learners they support are unable to legally “rip” copy-protected DVDs for informal learning in out-of-school contexts.

We request an exemption that enables **both educators and learners** working in these settings to use artifacts of their cultural heritage – classic and contemporary film and other digital media – for these new instructional practices that have the potential to engage, motivate and inspire children and young people who often experience transformative learning experiences in informal

¹ Alvermann, D. (2002). *Adolescents and literacies in a digital world*. New York: Peter Lang; Carrington, V. & Robinson, M. (2009). *Digital literacies: Social learning and classroom practices*. Thousand Oaks: Sage; Hobbs, R. (2010). *Digital and media literacy: A plan of action*. Washington, D.C.: John S. and James L. Knight Foundation and Aspen Institute. See also Jenkins, H., Purushotma, R., Clinton, K., Weigel, M., & Robinson, A. (2006) *Confronting the challenges of participatory culture: Media education for the 21st century*. Chicago: The MacArthur Foundation; Kress, G. (2003). *Literacy in the new media age*. London: Routledge; and Lankshear, C. & Knobel, M. (2003). *New literacies: Changing knowledge and classroom learning*. New York: Open University Press. For historical context on the use of multimedia production activities by students in elementary, secondary and higher education, see Palmieri, J. (2012). *Remixing composition: A history of multimodal writing pedagogy*. Carbondale: Southern Illinois University Press.

² MacArthur Foundation. Strategy. Accessed January 25, 2015 from <http://www.macfound.org/programs/learning/strategy/>

settings. Such learning experiences can powerfully activate digital and media literacy competencies, including the ability to access, analyze, evaluate, and create messages in a wide variety of forms. Learners are able to reflect on the social consequences of media in society and take action in the use of information and communication to make a difference in the world. Such purposes involving the use of copyrighted content in education are well-aligned with the goals of copyright law, which is to promote creativity, innovation and the spread of knowledge.³

All the arguments developed in our submission for Proposed Class 2 are relevant to Class 4. These arguments include:

- Both teachers and learners in informal settings need to use film clips for a wide range of teaching and learning purposes characterized broadly as educational use.
- Critical analysis of film clips is a vital component of teaching and learning with and about media.
- The creation and use of highly customized film clip compilations increases the efficiency of instruction in informal learning settings.
- The effective use of audiovisual resources is facilitated when educators and learners can create their own clips intentionally with a specific purpose in mind.
- Screencasts are inferior to digitally copied clips and are needed by some learners for various forms of direct instruction and project-based learning in informal learning contexts.

Adverse effects of not having an exemption include:

- Learners lack access to film cultural heritage for purposes of learning and this contributes with other factors to diminish the quality of education.
- Current law makes irrational distinctions among learners who engage in learning in different buildings and at different times of the year.
- Reliance on movie clip websites puts some learners at an educational disadvantage.
- Confusion over how teachers and learners can legally access audiovisual clips for fair use is exacerbated by current DMCA law.

Here are just a few of many examples of **youth media educators** now working with learners in non-profit organizations, libraries, and other informal learning environments who seek to be able to “rip” film and video for media literacy but who are currently prohibited from doing so because they primarily work in informal learning settings:

³ Crews, K. (1993). *Copyright, Fair Use and the Challenge for Universities*. University of Chicago Press.

D.C. Vito is the Executive Director of The LAMP NYC, a New York City non-profit organization that offers media literacy programs as afterschool and summer programs. The LAMP has created MediaBreaker, which is an online remix tool that enables learned to critically analyze media through a commenting tool that slows down the viewing experience and activates a set of critical question designed to strengthen media analysis skills. The LAMP collaborates with libraries and cultural organizations in developing educational programs for youth.

Rhys Daunic, Founder and Executive Director of The Media Spot, a Brooklyn-based non-profit organization that works to provide elementary and secondary school teachers with professional development experiences to support their growth as digital learners.

Akili Lee is the Co-Founder & Director of Digital Strategy and Development at Digital Youth Network (DYN) in Chicago, Illinois. He leads DYN's work in innovating new digital learning tools and supporting youth focused organizations develop models for successfully integrating digital media as a way to increase engagement and effectiveness. This organization uses a unique hybrid model to support youth in developing and applying digital skills in the classroom, out-of-school programming, and in the home. Akili is the creator of the iRemix Platform, which allows educators to leverage social networking in a safe solution for educational environments, leverage social tools, and integrate both recommended and custom goal and standard-based curriculum.

Jennifer Saunders, Founder of People to People Productions, is a media literacy educator who offers educational programs to learners in and out of schools. Her 80-hour film literacy program includes skill-building exercises and creative artistic activities that teach learners how the world of moving images affects their attitudes, behaviors and values.

Yonty Friesem, Associate Director of the Media Education Lab at the University of Rhode Island, is a veteran filmmaker and youth media activist from Tel Aviv Israel whose research explores how video production experiences support the development of digital empathy. Friesem works with youth in informal and formal learning environments, including at the Adams Memorial Library in Central Falls, Rhode Island, one of the most densely populated and poor cities in the United States, to bring digital and media literacy to underserved youth.

Statutory Factors

This requested exemption supports lawful uses that fall squarely within the mandate that section 1201 confers on the Copyright Office. Importantly, the incorporation of video clips into student-created multimedia presentations represents a strong transformative use of the copyrighted material. In light of each of the statutory factors set forth in 17 U.S.C. 1201(a)(1)(C), this exemption is recognized as a fair use:

- (i) **Nature of the Work.** Copy-protected audiovisual content, including entertainment, informational and other forms of contemporary and classic film and video content is relevant to learners today as educators aim to make direct connections between the academic content of the classroom, the targeted competencies and skills to be strengthened, and the lived experience of the learner.

- (ii) **Character and Use.** Whether originally used for entertainment, information or persuasive purposes, short excerpts of copy-protected works are repurposed as resources for learning in informal education as learners activate critical thinking, collaboration, creativity and communication skills in responding and creating with these resources.
- (iii) **Purpose.** An exemption enabling circumvention of technological measures applied to copyrighted works enables the robust practice of learning and teaching as well as criticism and comment.
- (iv) **Effect on Market.** The circumvention of technological measures does not impair the market for or value of copyrighted works because learners in informal settings are using these resources for an educational purpose only. The bypassing of copy-protection is used not as a replacement or substitute for the original, but as a resource for learning used for the primary purpose of activating learners' critical thinking, creativity, communication and collaboration skills.