



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

REQUEST FOR COMMENTS AND NOTICE OF PUBLIC HEARING.

PROMOTION OF DISTANCE EDUCATION THROUGH DIGITAL TECHNOLOGIES

The following excerpt is taken from Volume 63, Number 246 of the *Federal Register* for Wednesday, December 23, 1998 (pp. 71167-71169)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98-12A]

Promotion of Distance Education Through Digital Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The Copyright Office is preparing recommendations for Congress, in accordance with Section 403 of the Digital Millennium Copyright Act, on the promotion of distance education through digital technologies. This notice requests written comments from all interested parties, including representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, in order to elicit views and information to assist the Office in its analysis of the relevant issues preparatory to making its report and recommendations. This notice also announces the schedule for, and invites participation in, a series of three public hearings to be held in Washington, DC, Los Angeles, California and Chicago, Illinois.

DATES: Written comments must be received in the Copyright Office on or before 5 p.m. E.S.T. on February 5, 1999. Interested parties may submit written reply comments in direct response to the written comments or the oral testimony offered at the hearings.

Reply comments will become part of the record if received on or before 5:00 p.m. E.S.T. on February 24, 1999.

See **SUPPLEMENTARY INFORMATION** for hearing dates and additional submission deadlines.

ADDRESSES: All submissions should be addressed to Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. Those sent by regular mail should be sent to the U.S. Copyright Office, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Submissions delivered by hand should be brought to the Office of Policy and International Affairs, Office of the Register, James Madison Memorial Building, Room LM-403, 101 Independence Avenue, Southeast, Washington, D.C. Submissions by telefax should be made to (202) 707-8366.

Submissions by electronic mail should be made to `disted@loc.gov`; see **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

See **SUPPLEMENTARY INFORMATION** for hearing addresses.

FOR FURTHER INFORMATION

CONTACT: Shira Perlmutter, Associate Register for Policy and International Affairs, or Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. Telephone: (202) 707-8350. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Written Comments

The Copyright Office will be placing all comments and reply comments on its Website (<http://lcweb.loc.gov/copyright/disted/>). Comments and reply comments should be sent, therefore, in one of the following formats:

If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette, labeled with the name of the person

³Error, line should read:

"Affairs. Those sent by regular mail should be"

making the submission, his or her title and organization. The document itself must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 7.0 or earlier, or in WordPerfect Version 7 or earlier. The file name must be no longer than eight characters with a three-character extension.

If by electronic mail: Send to `disted@loc.gov` a message containing the name of the person making the submission, his or her title, organization, mailing address, telephone number, telefax number and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 7.0 or earlier, or in WordPerfect 7 or earlier. The file name must be no longer than eight characters with a three-character extension.

Anyone who is unable to submit a comment in electronic form should submit ten paper copies by hand or by mail to the appropriate address listed above.

All written comments should contain the name of the person making the submission, his or her title, organization, mailing address, telephone number, telefax number and e-mail address.

Public Hearings

The Copyright Office will hold three public hearings.

The first hearing will be held in Washington, DC, on January 26 and 27, 1999, beginning at 9 a.m. E.S.T. on both days, at the Postal Rate Commission, third floor Hearing Room, 1333 H St., Northwest, Washington, DC. This hearing will be preceded, on January 25, 1999 from 2 p.m. to

5 p.m., E.S.T. by a demonstration of distance education programs using digital technologies in the Automation Orientation Center, LM G-45, James Madison Building, Library of Congress, Washington, DC.

The second will be held in Los Angeles on February 10, 1999, beginning at 9 a.m. P.S.T., at the University of California at Los Angeles (UCLA), James West Alumni Center Conference Room, 325 Westwood Plaza, Los Angeles, California.

The third will be held in Chicago on February 12, 1999, beginning at 9:30 a.m. C.S.T., at the University of Illinois at Chicago, College of Medicine, Room 423, 1853 West Polk St., Chicago, Illinois.

Anyone desiring to testify at one of the hearings should submit a written request by hand delivery or telefax which should be received no later than 5 p.m. E.S.T. on January 12, 1999. All requests to testify should identify clearly the hearing to which reference is made and the individual or group desiring to appear. The Copyright Office will notify all witnesses of the date and expected time of their appearance, and the maximum time allowed for their testimony.

Anyone desiring to testify at one of the hearings must also submit a summary of their testimony, so designated. The summary may be delivered by hand or sent by telefax, electronic mail or regular mail. It must be received by 5 p.m. E.S.T. at least 10 days prior to the date of the hearing at which the testimony will be presented. Ten copies of the summary are required if delivered by hand or sent by regular mail.

Background

On October 28, 1998, H.R. 2281, the Digital Millennium Copyright Act, was enacted into law (Pub. L. 105-304, 112 Stat. 2860). Section 403 requires that the Copyright Office consult with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, and thereafter to submit to Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the interests of users. Such recommendations may include legislative changes.

The statute instructs the Register of Copyrights to consider:

- (1) The need for an exemption from exclusive rights of copyright owners for distance education through digital networks;
- (2) The categories of works to be included under any distance education exemption;

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(3) The extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) The parties who should be entitled to the benefits of any distance education exemption;

(5) The parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) Whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) The extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) Such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

In accordance with its mandate, on November 16, 1998, the Copyright Office published a Notice of Request for Information in the Federal Register asking for the identification of parties interested in the promotion of distance education through digital technologies and of the issues with which those parties were concerned. 63 FR 63749 (Nov. 16, 1998). Although December 7, 1998 was fixed as the deadline for receipt of communications from interested parties, due in part to the large volume of late responses, the Office continued to accept materials for consideration and inclusion in the public record until December 14, 1998. By that date, 175 responses were received. The Office is in the process of reviewing all received materials.

Specific Questions

The Office seeks comment on the following specific questions. Parties need not address all questions, but are encouraged to respond to those as to which they have particular knowledge or information.

1. Nature of Distance Education

(a) How may distance education be defined? In what sense does it differ from traditional face-to-face education? To what extent does it utilize digital technologies? In what sense does it differ from the general use of electronic communications in educational settings?

(b) What is the nature of the distance education programs using digital technologies that are currently available, or in development? Do they involve students using the Internet as a resource, communicating with teachers by e-mail, communicating with class members in chat rooms, or participating in classes conducted by teleconferencing? To what extent are they

interactive? To what extent are they asynchronous? To what extent are copies made or kept, and by whom?

(c) Are course materials made available in electronic form? To whom are they made available? What restrictions are imposed on their access, use, modification or retention?

(d) How are such programs funded? What proportion of the entities who develop or offer them are nonprofit? What types of fees are charged to students? Are the programs intended to, and do they, generate a profit?

(e) What proportion of such programs are accredited? By whom are they accredited?

(f) Who are the recipients of such programs? What communities are served? Are students primarily located in any particular geographic communities (e.g., urban or rural)? Are there particular criteria for enrolling in or otherwise gaining access to the programs? How many students participate in a program at a time? Are the programs made available to students in other countries?

(g) At what level are such programs offered? Are they offered at the level of elementary school, high school, college, graduate school, or adult education? Are courses offered for credit, and as part of degree programs?

(h) To what extent is new content created for such programs, and by whom? To what extent is pre-existing content used, and of what type (e.g., motion pictures, music, sound recordings, computer programs, books)? How is it used, and in what amounts?

(i) Are there institutional policies in place with regard to the creation and use of such programs? Is any instruction provided to students or teachers in connection with such programs regarding copyright law, or regarding the giving of attribution or credit?

2. Role of Licensing

(a) Where pre-existing content is used in distance education programs using digital technologies, to what extent do the persons or entities involved obtain permission for the use of that content? Is this accomplished by direct contact with the copyright owner, or in some other way? To what extent do the parties enter into negotiated licenses, or use form contracts?

(b) To what extent do the persons or entities providing such programs rely on defenses available under the copyright law in choosing not to obtain a license (e.g., fair use, section 110(2), or the doctrine of implied license)? To what extent do they use public domain material, and if so, of what type?

(c) Have there been difficulties in obtaining licenses? If so, for what reason(s)? Are the difficulties different in nature or degree than for other types of uses, including traditional education and including multimedia uses generally?

(d) To what extent can technology be used now or in the future to ameliorate any difficulties in licensing? Can it serve to

facilitate the identification of rights holders, the clearance of rights and the process of obtaining licenses, including price differentiation based on such attributes as the recipient's purpose, need, institutional affiliation, and ability to pay?

(e) What other options exist for making the permissions process easier? How likely is the development of collective or blanket licensing, or "one-stop shops," and within what time frame?

3. Use of Technology

(a) What technologies are used to prepare and disseminate digital distance education programs? Are these technologies specifically developed or produced for the distance education programs, or are they generally commercially available?

(b) What technologies are available to protect the security of digital distance education programs? In particular, are there technologies in use or under development that can prevent the unauthorized reception, use, or retention of copyrighted materials incorporated into such programs, or that can authenticate materials or protect their integrity? What is the time frame for the availability of such technologies? What parties or entities are developing them, and what type of costs are involved in implementing them?

4. Application of Copyright Law to Distance Education

(a) Is existing law adequate in addressing current and anticipated forms of distance education using digital technology? If not, in what ways is it inadequate? Are there reasons why digital transmissions should be treated differently from education through broadcasting or closed circuit technologies, or in a traditional classroom?

(b) Is it preferable to deal with the copyright issues raised by digital distance education through specific exemptions like section 110(2) or

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through a flexible balancing approach like fair use? What role should be played by voluntary guidelines such as the Fair Use Guidelines for Educational Multimedia (sometimes referred to as the Consortium of College and University Media Centers (CCUMC) guidelines)?

(c) If a new or amended exemption or exemptions for distance education were to be adopted:

- Which section 106 rights should or should not be covered?

- What categories of works should or should not be covered?

- To what extent should there be quantitative limitations on the portions of a work that can be used?

- Who should be entitled to the benefits of an exemption? Accredited or nonprofit institutions only?

- How should the class of eligible

recipients be defined?

- Should such an exemption be limited to nonprofit distance education activities?

- Should the use of technological measures to protect against unauthorized access to, and use or retention of, copyrighted materials be required? If so, what types of measures?

- To what extent should the availability of licenses for the use of copyrighted works be considered in assessing eligibility?

- Should there be limitations on student copying or retention of the copyrighted materials?

- Should the provision of electronic reserves be included?

- Should the provision of any information about copyright

- law be required as a condition for eligibility?
- Are there other factors that should be taken into account?

(d) What would be the economic impact of such an exemption, including the impact on the actual or potential markets of copyright owners of different types of works?

(e) What would be the international implications of such an exemption? Would it be consistent with U.S. treaty obligations?

Dated: December 18, 1998.

Marybeth Peters,
Register of Copyrights.

[FR Doc. 98-34010 Filed 12-22-98; 8:45 am]

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