February 5, 1999

Sayuri Rajapakse
Attorney-Advisor
Office of Policy and International Affairs
Office of Register
James Madison Memorial Building
Library of Congress; Room LM-403
101 Independence Avenue, S.E.
Washington, DC 20024

       Re: Comments of Education Management Corporation Regarding
              the Promotion of Distance Education Through Digital Technologies

Dear Ms. Rajapakse:

I am Robert Knutson, Chairman and CEO of Education Management Corporation ("EDMC") headquartered in Pittsburgh, Pennsylvania. Organized in 1962, EDMC has grown to become one of the largest providers of proprietary post-secondary education in the United States. The company's main operating unit, The Art Institutes, has 17 schools across the United States with a current enrollment of more than 21,000 students. Our schools offer licensed, accredited associate's and bachelor's degree programs and non-degree programs in the areas of design, technology and media arts, culinary arts, fashion and paralegal studies.

Distance learning through digital technologies in the coming years is a top priority within EDMC. This vehicle will enable students of The Art Institutes, as well as those with the desire to have direct access to continuing and professional education, to have the added flexibility of choosing how, when and where to receive quality instruction. With this concept in mind, we recently established a subsidiary company, EDMC OnLine. It will be the vehicle to allow EDMC to examine and exploit those opportunities. Specifically, EDMC OnLine is charged with the mission of extending the reach of EDMC by developing and offering programs to new markets through distance delivery.

In accordance with the *Federal Register* notice published on December 23, 1998 (63 FR 71167), we hereby submit the following comments on the promotion of distance education through digital technologies.

EDMC's comments are provided below and are organized according to the seven factors described in the *Federal Register* notice relating to Section 403 of the Digital Millennium Copyright Act.

(1)   The need for an exemption from exclusive rights of copyright owners for distance education.

There is a compelling need for a broad exemption from exclusive rights of copyright owners for distance education utilizing digital technologies. Exemptions for distance education are appropriate and warranted because of distance education's decentralized complexities and the incontrovertible need to provide distance education to increasing numbers of traditional and non-traditional students pursuing a large and growing number of curricula.

It is no longer sufficient that educational institutions educate their students only in the "traditional" classroom environment. Today's successful post-secondary educational institutions must expand beyond the four walls of the classroom and provide students with on-line curricula delivered in locations where the students can conveniently receive them while using the latest educational technologies and techniques.

As technology advances and new forms of educating our students evolve, we will need to provide our students with the most current information in the fastest possible manner. Today's business practices and systems for the distribution and licensing of copyrighted works are quickly becoming dated. To continue to provide the finest education to our students, it is essential that an exemption or a new licensing model be established, allowing educational institutions to provide their students in a timely manner with the information and materials they require.

(2)   The categories of works to be included under any distance education exemption.

All categories of works should be included in an appropriately tailored distance education exemption. There appears to be no justification for excluding a particular type or category of work from the exemption. To exempt one or more categories of works would discriminate against those students who study in areas involving other types of works. For instance, to exempt only works that relate to music or architecture would discriminate against those students whose studies focus on audiovisual or computer programs.

(3)   The extent of appropriate quantitative limitations on the portions of works that may be used.

Whether quantitative limits on the portions of works used under the exemption are to be imposed should largely depend upon the type of work used and the manner in which the work is

used. To the extent that it may be appropriate to impose quantitative limits on the portions of a particular work that may be used under the exemption, it is essential that these limits be no greater than a demonstrated need requires. Further, if quantitative limits are found to be necessary, these limits must be easy to understand and administer.

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

Students enrolled at non-profit and tax paying for-profit educational institutions should all enjoy equally the benefits of this exemption. There is no supportable basis for denying the exemption to some students merely because they attend private, for-profit educational institutions. Not-for-profit and for-profit educational institutions compete for many of the same students and frequently offer similar curricula. Our more than 20,000 students would properly complain if limitations are placed on their access to instructional materials merely because their school is not publicly supported. Neither should their tuition be increased to pay for copyrighted works given to other students at no cost. Any determination of who ought to benefit from the distance education exemption should focus on the recipients of the copyrighted works, not the transmitter of those works. The nature of the educational mission and process makes the distance education exemption appropriate to all students, regardless of the form of governance under which the institution operates.

(5)   The parties who should be designated as eligible recipients of distance education materials.

As stated in our comments to factor four, we see no reason to distinguish between eligible recipients. All students enrolled in a qualified educational institution should be able to benefit from the 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 material as a condition of eligibility for any distance education exemption.

The exemption should mandate the use of technological measures to protect against infringement or improper use of copyrighted works. Use of such technology will protect copyright owners whose works are used under the proposed distance education exemption. The types of technology employed should be those technologies that are defined as "standard technical measures" in recently enacted section 512(i)(2) of the Copyright Act. Mandating the use of "standard technical measures," as defined by section 512(i)(2), will ensure that Service Providers do not inadvertently or purposefully interfere with the technology used to protect the copyrighted work from infringement.

(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.

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. A compulsory license provision in the copyright law, which allows educational institutions to disseminate materials to its students by digital technologies quickly and easily, may be a viable alternative to a distance education exemption. The important factors are that students be provided with the information and materials they need in a timely fashion, and that the administrative burden on the institution must be minimized.

We appreciate the opportunity to submit these comments and urge their adoption.

Respectfully,

Robert B. Knutson