

From: "Distance Education Study" <disted@loc.gov>  
To: <jfed@loc.gov>  
Subject: Fw: Reply to call for written comments (due Feb 5, 1999)  
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-----Original Message-----

From: Eliz.Kirk@jhu.edu <Eliz.Kirk@jhu.edu>  
To: disted@loc.gov <disted@loc.gov>  
Cc: Jim Neal <jneal@jhu.edu>  
Date: Thursday, February 04, 1999 6:00 PM  
Subject: Reply to call for written comments (due Feb 5, 1999)

> To the Office of the Register of Copyright,  
>  
> In accordance with the call for written comments, I write to remind the  
> Office of the Register of certain key elements that must be present in new  
> legislation regarding copyright as it relates to digital dissemination of  
> distance education.  
>  
> New legislation must take into account the critical importance of distance  
> education at the end of the twentieth century. For the first time, large  
> numbers of citizens who are not able to avail themselves of traditional  
> learning opportunities may work at home to attain basic literacy,  
> university undergraduate or graduate degrees, professional credentials, or  
> continuing professional education from a wide range of accredited  
> institutions across the country. At universities such as The Johns  
> Hopkins University, part-time and nontraditional students, most of whom  
> are engaged in learning activities away from the University's campus, now  
> outnumber traditional full-time students. Given the high cost of education  
> and the increasing ubiquity of home computing, the federal government  
> should encourage the development and deployment of part-time and distance  
> education, especially those programs that exploit digital technologies.  
> Indeed, such federal actions as investment in the Internet and provisions  
> in the Higher Education Amendments of 1998 (which provides federal student  
> grant and loan monies to certain distance education programs) demonstrate  
> a commitment to increase support in this area.  
>  
> Educational exemptions to the Digital Millennium Copyright Act should  
> follow this lead. The law should not penalize citizens who learn at home

- > or remote from the traditional classroom. The law should be written to
- > encourage institutions to explore the new technologies specifically
- > because these benefit more of our citizens.
- >
- > In particular, new legislation should clearly state, as the House Report
- > on the 1976 Act does not (U.S. Congress, House Committee on the Judiciary,
- > Copyright Law Revision: H. Rept. 94-1476 on S. 22, 94th Cong., 2d Sess.,
- > 1976), that educational exemptions should not be tailored to distinguish
- > between face-to-face and distance instruction.
- > \*\* Transmission of audiovisual materials should not be excluded from
- > exemptions for distance instruction. The growth of the Internet now
- > permits the full suite of media to be delivered to students' desktops,
- > and in a secure manner. It is safe to say that transmission across the
- > network to authenticated individuals is as secure as presentation in a
- > classroom. It does not make sense, in the present environment, to
- > require "simultaneous presence in the same general place" to meet
- > the exemption.
- > \*\* Language limiting the exemption to distance learning that supports
- > primarily those students who may not attend traditional classes because
- > of disabilities or "special circumstances" should be excluded from the
- > new Act. The exemption should benefit all citizens.
- > \*\* Furthermore, the House Report on the 1976 Act requires that, for
- > exemption, transmission of distance instruction must be
- > pointed primarily to "places normally devoted to instruction". New
- > legislation must protect the exchange of information for instructional
- > purposes, not places. To do less would exclude all the benefits of the
- > Internet for asynchronous learning.
- >
- > It is clear to faculty and librarians in higher education that statutory
- > recognition of educational and library exemptions are a continued need.
- > The Office of the Register will hear from other parties that wider
- > exemptions are not needed because of the availability of licensing
- > agreements. It is precisely because of the restrictive nature of licensing
- > agreements, and their sometimes prohibitive cost, that legislative action
- > is required. The Register should be made aware that licensing agreements
- > are often available on a sliding price scale, with remote access
- > (availability beyond the traditional campus) at significantly higher rates
- > than those that are site bound. Some information providers require
- > separate licenses for different subnetworks within the same institution.
- > Some simply do not provide any access at all beyond a fixed location. It
- > is within the financial interest of commercial parties to favor no changes
- > in legislation.
- >

> The "pay per view" model to which licensing relegates the transmission of  
> protected materials works very well for commercial entertainment. It does  
> not work for education, where the goal of viewing or transmitting  
> materials is decidedly not to limit the potential market for a work, but  
> rather to prepare our citizens to be literate and responsible consumers of  
> creative work throughout their lives. Education also prepares people to  
> create new work, guaranteeing the continued success of publishers as well  
> as authors.

>  
> We value the participation of the Register in the preparation of materials  
> to be presented to Congress in advance of legislation. In particular, we  
> appreciate this opportunity to offer comments on the Office's ongoing  
> consideration of this matter.

>  
> Sincerely,  
> Elizabeth E. Kirk  
> Electronic and Distance Education Librarian

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