

**COMMENTS OF
MOTION PICTURE ASSOCIATION OF
AMERICA**

**PROMOTION OF DISTANCE EDUCATION
THROUGH DIGITAL TECHNOLOGIES**

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Motion Picture Association of America (MPAA) is a trade association representing seven of the largest U.S. producers and distributors of feature motion pictures, TV programs and home video material.¹

On December 7, 1998, MPAA filed preliminary thoughts on the issues presented in this proceeding. That filing is attached as a supplement to these comments.

MPAA and its members are strong supporters of all bona fide educational activities, including distance education. Technological advances promise to open up vast new opportunities to inform and educate, and every effort should be made to maximize the ability of technology to meet our nation's educational needs.

The mere fact that technological advances have occurred, however, is not evidence that changes in the copyright law are necessary. These advances do present new challenges to both owners and users of copyrighted works and an examination of these challenges is desirable, particularly with respect to a crucial national purpose like distance education. But the issues to be

¹ MPAA member companies are Buena Vista Pictures Distribution, Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Twentieth Century Fox Film Corporation; Universal Studios, Inc.; and Warner Bros., a Division of Time Warner Entertainment Company, L.P.

examined do not all relate to whether the rights of copyright owners should be further limited.

In preliminary comments Marion Harrell of the American Psychological Association stated:

APA is also a primary journal and book publisher and a database producer (of the PsycINFO database). Therefore we have concerns about whether current copyright laws are sufficient to protect the reference materials that might be used in distance learning.

The Congressional mandate in this proceeding requires the Copyright Office to submit recommendations “on how to promote distance education through digital technologies ... while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works.”

Although most of the specific questions the Copyright Office is asked to consider relate to possible exemptions from exclusive rights, the mandate given to the Copyright Office also requires consideration of whether exclusive rights should be enlarged or strengthened in order to promote distance education and maintain the “appropriate balance” between the needs of users and owners in the new technological environment.

MPAA supports the right of APA and other copyright owner interests to present evidence that greater protections are necessary to stimulate the production and dissemination of works necessary to carry out effective distance education activities, and urges the Copyright Office to give such evidence the same consideration given to calls for limitations on copyrights.

As indicated in MPAA's preliminary submission, the burden is on the proponents of change to first establish a need for change and then to recommend change that maintains "an appropriate balance." The questions presented in the Copyright Office's Notice are for the most part directed to those who would contend that our copyright laws should be changed. MPAA looks forward to responding to any evidence presented by other parties to this proceeding, but at this time is not aware of evidence that would support any change in the copyright law to promote distance education.

There is one question presented in the Notice that MPAA can address at this time. The Copyright Office asks "What role should be played by voluntary guidelines such as the Fair Use Guidelines for Educational Multimedia" Such voluntary guidelines can play a very significant and constructive role. In fact, it may be appropriate to defer any legislative action even if there is evidence that distance education objectives require changes in the relationships between owners and users of works, until negotiations among the parties aimed at voluntary solutions have been undertaken.

After passage of the 1976 Copyright Act MPAA and other copyright owner interests participated in extensive negotiations with the educational and library communities on voluntary guidelines for off-air video taping for educational uses. These negotiations were successfully concluded in 1981 and printed in the October 14, 1981 Congressional Record at page E 4750. To the best knowledge of this writer, these guidelines have worked well, balancing the needs of both owners and users without necessitating changes in the basic fabric of the Copyright Law. Most importantly, these guidelines have served the needs of educators and have contributed to our national educational objectives.

A similar, and similarly successful, process was undertaken with regard to educational multimedia issues, as referenced in the Notice. Although the final guidelines did not receive endorsement from every sector of the educational community, they were endorsed by the vast majority of those who actually engage in educational multimedia activities and who devoted their time and creativity to working out “an appropriate balance between the rights of copyright owners and the interests of users.”

MPAA strongly urges the Copyright Office to assign a heavy preference to a voluntary guidelines approach as opposed to a legislative approach to resolve any distance education problems that may be demonstrated during the course

of this proceeding. Voluntary guidelines, in many circumstances, can provide flexibility, and speed, that are often lacking in the legislative process. Should the Copyright Office find voluntary guidelines on the use of copyrighted works in distance education activities to be in the public interest, MPAA will devote its full attention and resources, as we did in the multimedia negotiations, to helping reach a successful outcome.

Respectfully submitted,

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