

EXEMPTION TO THE PROHIBITION OF CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES

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Item 1. Submitter and Contact Information

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Item 2. Brief Overview of Proposed Exemption

The Library of Congress should offer an exemption that enables educators and students in grades K-12 and educators and learners in libraries, museum and nonprofit organizations to “rip” encrypted or copy-protected lawfully accessed audiovisual works used for educational purposes.

Item 3. Copyrighted Works Sought to be Accessed

The proposed exemption is a subset of section 102—lawfully accessed audiovisual works—that has been further defined by its use in both K-12 education and in afterschool programming in libraries, museums and in non-profit organizations.

Item 4. Technological Protection Measure

Lawfully accessed audiovisual works may include motion pictures using copy-protection CSS on DVDs or via online streaming. It is unknown which encryption mechanisms and technological protection measures are used for online streaming, but they do impede the ability of educators and learners to “rip” clips lawfully.

Item 5. Noninfringing Uses.

Teachers use audiovisual clips to engage learners, demonstrate or illustrate ideas, critically analyze media, and help students activate critical thinking to enable them to connect knowledge and information to their everyday life. All of these noninfringing uses of audiovisual media are lawful under the doctrine of fair use. Media literacy educators in grades K-12 depend on the ability to access films, television programs and other DVD and other digital devices that may be locked up with copy-protected software.

Education is the middle of a powerful transformation resulting from the rise of digital media and culture. Kindergarten through twelfth grade (“K-12”) educators now use media as a routine and essential part of their teaching practice. K-12 educators view media as an important component of their teaching experience. Media use empowers students to be both critical thinkers and creative producers of an increasingly wide range of messages using image, language, and sound. This usage spans the curriculum as

primary and secondary educators at every grade level, and in all subjects, incorporate media into their lesson plans.

Young people face many challenges in interpreting media messages as they navigate the process of growing up, where watching four hours of movies, television and audiovisual media each day is a normative part of cultural experience. Using copyrighted content in media literacy is essential in order to understand how media messages about sexuality, materialism, terrorism, and other important social issues are carefully constructed to influence knowledge, attitudes and behavior. Today, major organizations including the National Council for Teachers of English (NCTE) and the National Council for Social Studies (NCSS) have adopted formal resolutions on the value of integrating media literacy into the curriculum. In 2013, the American Library Association's Young Adult Library Services Association (YALSA) recommended media literacy as a vital part of library service to teens. In 2014, the Aspen Institute Task Force on the Internet and Learning produced a white paper, *Learner at the Center of a Networked World*, recommending media literacy as a vital life skill for all learners.

Some of the most important and innovative work in media literacy education is occurring in libraries, museums and afterschool programming, supported by non-profit organizations and charitable foundations. For example, the John D. and Catherine T. MacArthur Foundation have supported the YouMedia program in Chicago at the Harold Washington Library offers informal learning programs in video production where learners develop collaboration, creativity and critical thinking skills through active engagement in manipulating the bountiful array of images, language and sounds that are part of their popular culture.

The uses described above that would be facilitated by the exemption requested are lawful ones that fall squarely within the mandate that section 1201 confers on the Copyright Office and the Librarian of Congress. Many of the uses just described fall within the ambit of Sec. 110(1) of the Copyright Act. Beyond that, use of copyright content for classroom teaching is a classic fair use. Importantly, the incorporation of media in teacher's lessons represents a strong transformative use of the copyrighted material, and for a fair use analysis, transformativeness is the most important consideration. Thus, for example, when teachers take a clip, subject it to critical analysis, and frame it with discussion and lecture the use is transformative because the teacher "add[s] something new, with a further purpose or different character, altering the first [work] with new expression meaning, or message."

As high-impact digital technologies have become more ubiquitous, students have come to expect that video displays will have high-quality image and sound. There is no question that high quality digital media formats have become the universal standard in daily life, and student receptivity to media in the classroom is dependent upon teachers meeting students' expectations. Many K-12 students are unfamiliar with low-definition forms of media like VHS. Students have giant HD television screens at home, see movies in IMAX projection and 3D in the theaters, and play video games on their retina display computers wherever they go. In fact, this generation of students is so unaccustomed to

non-digital media that the integration of media in the classroom loses its impact and efficacy when it is not high quality, frustrating the entire purpose of teachers' lesson plans. Film studies teachers who analyze a movie director's choices in composition, editing, and scenic effects need high quality images, just as does the science teacher who shows film clips on the microscopic details of living organisms. All teachers need media in the classroom, but for detailed and highly technical lessons, high quality media is crucial.

Item 6. Adverse Effects

The most significant adverse effect is an inevitable diminishment in the quality of media literacy education if teachers and students cannot create excerpts by accessing audiovisual works available through copy-protected DVDs or streaming media.

There are many reasons why teachers need to be able to use clips that they have personally ripped and downloaded. Teachers have reported a variety of problems when trying to create clips from lawfully-acquired streaming videos on services such as Netflix and Amazon Prime. It is unknown precisely how technological protections interfere with screencasting or other tools for clipping.

Another adverse effect occurs when teachers cannot use clips of a streaming media or copy-protected DVD, they may search for already-created clips on YouTube or other online sources. Internet use in school can be plagued by often inconsistent connections, slow bandwidth, website unavailability, and school district-imposed content filters. Each of these defects is uncontrollable and unpredictable, and serves to chill teachers' enthusiasm for utilizing media in their curricula. The reality for most educators is that school-based Internet is still not sufficiently reliable in all school districts in the US to depend upon as a keystone of their lesson plans.

Online clip inventories also constrain teachers' ability to locate particular clips needed for their lesson plans. In order for media compilation websites to be adequate alternatives to circumvention for clip compilation uses, these websites would need, at a minimum, to offer educationally relevant clips from movies still in commercial distribution. Clip websites like Youtube may also split longer scenes into separate clips, forcing teachers and students to sit through page loading, buffering, and (often very inappropriate) advertisements. These constraints likewise inhibit educators' ability to teach effectively.

For the reasons identified above, the Library of Congress should offer an exemption that enables educators and students in grades K-12 and educators and learners working in libraries, museum and nonprofit organizations to "rip" lawfully accessed audiovisual works used for educational purposes.

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