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APPENDIX A

HeinOnline -- 2004 Technology, Education, and Copyright Harmonization Act of 2002: A Legislative History [i] 2004

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Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on synthetic methionine from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Sweet (202–205–3455) or George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30463 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday and Wednesday, December 1–2, 1998, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210. December 1 will be an all day meeting and December 2 will be half day, both days beginning at 9:00 a.m.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting.
- Workforce Investment Act of 1998.
- Other Matters of Interest of the Committee.
- Veterans Employment Opportunities Act of 1998.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than November 23, 1998.

Signed at Washington, D.C. this November 9, 1998.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 98–30569 Filed 11–13–98; 8:45 am]

BILLING CODE 4510–79–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–12]

Promotion of Distance Education Through Digital Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of request for information.

SUMMARY: As required by section 403 of the Digital Millenium Copyright Act, enacted October 28, 1998, the Copyright Office is initiating its study of the promotion of distance education through digital technologies, for the purpose of making recommendations to the Congress. Presently, the Copyright Office is establishing parameters for its study of the issues. Through this preliminary notice, the Office seeks to identify all interested parties and determine what matters those parties deem relevant and important. The Office anticipates the possibility of consultations and public meetings, as well as the submission of formal statements. At this time, the Copyright Office is soliciting only the identification of any and all potentially interested parties and an identification of the issues with which they may be concerned.

DATE: Written submissions are due by December 7, 1998.

ADDRESSES: If sent by mail, an original and five copies of written submissions should be addressed to Shira Perlmutter, Associate Register for Policy and International Affairs, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of written submissions 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, S.E., Washington, D.C. 20559–6000.

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. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

In April 1998, Senator Orrin G. Hatch, Chairman of the Senate Committee on the Judiciary, with Senators Patrick J. Leahy and John Ashcroft, sent a letter to the Register of Copyrights requesting the Copyright Office to facilitate a series of discussions to be held on the subject of an exemption for digital distance education to be included in the Digital Millenium Copyright Act of 1998 ("DMCA"). Senators Hatch, Leahy and Ashcroft further requested the Copyright Office to report its findings to the Committee, and to develop policy options and legislative recommendations.

On April 27–28, 1998, the Register of Copyrights and her staff held intensive discussions with certain interested parties, including representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives. Through the process of negotiation it was possible to identify some areas of potential agreement among the parties. It also became clear,

Office of the Secretary and at the Commission's web site.

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however, that many complex and interrelated issues were involved. All of these issues could not be given appropriate consideration in the time available. On April 29, 1998, at the conclusion of the discussions, the Copyright Office submitted its recommendations to Senators Hatch, Leahy and Ashcroft in the form of statutory language for a narrow amendment to 17 U.S.C. 110(2), and a proposal for a study of the issues involved in interactive digital distance education. Rather than amending section 110(2) in the DMCA, the Senate mandated a broad study of the overall subject by the Copyright Office. Such a study was also incorporated into the version of the bill passed by the House.

On October 28, 1998, H.R. 2281, the Digital Millenium Copyright Act, was enacted into law. 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 Register of Copyrights has been instructed 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;

(3) The extent of appropriate quantitiative limitations on the portions of work 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 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.

Request for Information

The Copyright Office is initiating its study of the issues related to the promotion of distance education through digital technologies. In order to assist in planning and establishing paramenters for the study, the Office is hereby seeking identification of any potentially interested parties and the issues with which they may be concerned. After this preliminary information is gathered, the Office will determine what additional activities are helpful and appropriate. Such additional activities may include consultations and public meetings, as well as the submission of formal statements.

Written submissions will be accepted from all interested parties. While there is no prescribe format for these initial informational statements, any written submission should include the interested party's name, title, organization, mailing address, telephone number, facsimile number, and e-mail address, if available, and a list and short description of any issues that he or she considers relevant and important.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98-30563 Filed 11-13-98; 8:45 am]

BILLING CODE 1410-30-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following extension of a currently approved collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 15, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518-6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-518-6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

SUPPLEMENTARY INFORMATION: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

OMB Number: 3133-0133.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 703 Investment and Deposit Activities.

Respondents: 6,900.

Estimated No. of Respondents/Recordkeepers: 6,900.

Estimated Burden Hours Per Response: 42.8 hours.

Frequency of Response: Other.

Estimated Total Annual Burden Hours: 295,481.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98-30490 Filed 11-13-98; 8:45 am]

BILLING CODE 7535-01-U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date & time: December 14 and 15, 1998; 8:30 a.m.-5 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

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DOCUMENT NO.

1. **National Federation of Abstracting & Information Services**
   (Richard T. Kaser, Executive Director)

2. **Northern Virginia Community College**
   (Sandra Beeson, Coordinator)

3. **The College of William & Mary**
   (Scott Nelson, Assistant Professor of History)

4. **University of Hawai'i**
   (David Lassner, Director of Information Technology)

5. **State Historical Society of Iowa**
   (Lowell J. Soike, Ph.D. Historian, Community Programs Bureau)

6. **The Society of American Archivists**
   (Luciana Duranti, President)

7. **Organization of American Historians**
   (Arnita A. Jones, Executive Director)

8. **American Society of Media Photographers, Inc.**
   (Victor S. Perlman, Managing Director and General Counsel)

9. **National Coordinating Committee for the Promotion of History**
   (Page Putnam Miller, PhD)

10. **Ball State University**
    (Dr. Fritz Dolak)

11. **The Learning Institute for Nonprofit Organizations**
    The Chicago Bar Association Computer Law Committee
    (Anne C. Keays, Schwartz & Freeman, Law Offices)

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12. **The Authors Guild, Inc.**
(Paul Aiken, Executive Director)

13. **Association of Research Libraries**
(Prudence S. Adler, Assistant Executive Director)

14. **National Archives**
(Mary A. Giunta, Director for Communications & Outreach)

15. **American Council on Education**
(Anthony V. Lupo, Arent Fox)

16. **FUJITSU Limited**
(Akira Takashima, Senior Vice President)

17. **American Library Association**
(Carol C. Henderson, Executive Director)

18. **National Assoc. of State Universities and Land-Grant Colleges**
(C. Peter Magrath, President)

19. **Association of College & Research Libraries**
(Althea H. Jenkins, Executive Director)

20. **Corporation for Public Broadcasting**
(Kathleen Cox, General Counsel and Corporate Secretary & Robert M. Winteringham, Staff Attorney)

21. **Art Museum Image Consortium**
(Jennifer Trant, Executive Director)

22. **The Texas A&M University System**
(Barry B. Thompson, Chancellor)

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23. Colorado State University (College of Business)
(Jamie Switzer, Director)

24. Committee on Institutional Cooperation
(Roger G. Clark, Director)

25. Diocese of Allentown
(Jack Clark, Assistant Superintendent, Government Programs and Technology)

26. The Open University of the United States
(Bob Masterton)

27. The Association of American University Presses, Inc.
(Peter Givler, Executive Director)

28. Association of American Universities
(John C. Vaughn, Executive Vice President)

29. The Teaching, Learning and Technology Group
(Frank W. Connolly, Ph.D., Senior Associate)

30. George T.W. Miller, Jr.,
Distance Learning Teacher, Utah

31. Oregon State University Libraries
(Loretta Rielly, Head of Reference and Instruction Services)

32. University of Maryland University College
(Anne S. Perkins, Vice President, Governmental Relations)

33. Medical Library Association
(Marianne Puckett, Chair, Medical Library Association Governmental Relations Committee)

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34. **Golden Gate University**
(Steven Dunlap, Head, Regional Campus Services)

35. **Indiana University, Purdue University, Indianapolis**
(Kenneth D. Crews, Associate Professor of Law and of Library and Information Science, Associate Dean of the Faculties for Copyright Management)

36. **American Association of Community Colleges**
(David R. Pierce, President)

37. **Visual Resources Association**
(Jenni Rodda, President; Kathe Albrecht, Co-Chair, Intellectual Property Rights Committee; Virginia M.G. Hall, Co-Chair, Intellectual Property Rights Committee)

38. **American Association of Law Libraries**
(Robert L. Oakley, Washington Affairs Representative)

39. **The Magazine Publishers of America**
(Michael R. Klipper, Meyer & Klipper, PLLC)

40. **The Association of Test Publishers**
(Alan J. Thiemann, William Ashworth, Taylor Thiemann & Aitken, L.C.)

41. **Rio Salado College**
(Linda Thor, President)

42. **Saint Joseph's College of Maine, Continuing and Professional Studies**
(Krista Rodin, Ph.D., Dean, Continuing and Professional Studies)

43. **Consortium of College and University Media Centers**
(Diana Vogelsong, Chair, Government Relations and Public Policy Committee)

44. **Johns Hopkins University**
(Elizabeth Kirk, Electronic and Distance Education Librarian)

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45. **University of North Carolina at Chapel Hill**
(Edward Brooks, PhD, Associate Provost)

46. **Information Industry Association**
(Dan C. Duncan, Senior Vice President, Government Relations)

47. **National School Boards Association**
(Leslie Harris, President, Leslie Harris & Associates)

48. **International Society for Technology and Education**
(Leslie Harris, President, Leslie Harris & Associates)

49. **Consortium for School Networking**
(Leslie Harris, President, Leslie Harris & Associates)

50. **American Association of University Professors**
(Ruth Flower, Director of Government Relations)

51. **American Society of Composers, Authors and Publishers**
(I. Fred Koenigsberg, White & Case, LLP; Joan M. McGivern, ASCAP)

52. **The Recording Industry Association of America, Inc.**
(Steven R. Englund, Arnold & Porter)

53. **Stanford Center for Professional Development**
(Aubrey Harris, Chief Engineer)

54. **Home Recording Rights Coalition**
(Ruth Rodgers, Executive Director)

55. **Digital Future Coalition**
(Peter Jaszi)

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56. **Association of America's Public Television Stations**
(Marilyn Mohrman-Gillis, Vice President, Policy and Legal Affairs; Lonna Thompson, Director, Legal Affairs)

57. **University of Continuing Education Association**
(Kay J. Kohl, Executive Director)

58. **Digital Media Association**
(Seth D. Greenstein, McDermott, Will & Emery)

59. **Kansas State University**
(Rosemary Talab, Associate Professor, Classroom Technology)

60. **The John Marshall Law School**
(James R. Sweeney, Director)

61. **Special Libraries Association**
(David R. Bender, Ph.D.)

62. **Georgetown University**
(*Submitted by* Donna Demac, Adjunct Professor of Intellectual Property, and Online Law, Communication, Culture and Technology Program)

63. **Center on Distance Education for Lifelong Learning**
(Donna Demac, Washington Counsel)

64. **Association of American Publishers, Inc.**
(Patricia Schroeder, President and Chief Executive Officer)

65. **Motion Picture Association**
(Fritz E. Attaway, Senior Vice President, Government Relations)

66. **National Education Association**
(Jon Bernstein, NEA Government Relations, Senior Professional Associate)

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67. **The Walt Disney Company**
(Preston Padden, Executive Vice President, Government Relations)

68. **Broadcast Music, Inc.**
(Marvin L. Berenson, General Counsel; Michael J. Remington, Drinker Biddle & Reath, LLP)

69. **American Association of State Colleges and Universities**
(Edward M. Elmendorf, VP, Division of Government Relations and Policy Analysis)

70. **United States Catholic Conference**
(Katherine G. Grincewich, Assistant General Counsel)

71. **The University of Utah**
(Sarah C. Michalak, Director, Marriott Library; Clifford J. Drew, Associate Vice President for Instructional Technology and Outreach)

72. **Public Broadcasting Service**
(Jeannette L. Austin, Vice President and Deputy General Counsel)

73. **Central Michigan University**
(Richard Davenport, Provost and Vice President for Academic Affairs)

74. **Harvard University, John F. Kennedy School of Government**
(Anne Drazen, Associate Dean of Information Technology; Jon Binks, Copyright Officer)

75. **The Florida State University**
(Dr. Alan R. Mabe, Associate Vice President and Dean of Graduate Studies)

76. **American Association of Museums**
(Edward H. Able, Jr., President and CEO)

77. **The University of New Mexico**
(Bernard Moret, Research Policy Committee)

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78. **National Public Radio**
(Denise Leary, Deputy General Counsel)

79. **Intertrust**
(Victor Shear, Chairman and Chief Executive Officer)

80. **Law Offices of Patrice Lyons**
(Patrice Lyons)

81. **Southern Illinois University**
(Carolyn A. Snyder, Dean, Library Affairs)

82. **American Bar Association**
Consultant's Office on Legal Education
Council for the American Bar Association's Section of Legal Education and Admission to the Bar
(Kurt Snyder, Esq., Assistant Consultant on Legal Education)

83. **National Music Publishers' Association, Inc. & The Harry Fox Agency, Inc.**
(Edward P. Murphy, President)

84. **College of Extended Learning, California State University, Northridge**
(Dr. Michael Reuben Stevenson, Executive Director)

85. **Oregon University System**
(Jon R. Root, Director)

86. **OMITTED**

Submissions after Number 86 were received after December 7, 1998.

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DOCUMENT NO.

87. National Education Knowledge Industry Association
(C. Todd Jones, President)

88. George Washington University
(David Nutty, Associate University Librarian for Information Services and Technology)

89. Nova Southwestern University
(Donald E. Riggs, Vice President for Information Services and University Librarian)

90. University of Washington
(Robert C. Miller, Jr., Associate Vice Provost for Research)

91. University of Florida
(Carol Turner, Director for Public Services, George A. Smathers Libraries)

92. Columbia University
(Michael Crow, Executive Vice Provost)

93. University of North Carolina at Charlotte
(Cynthia Gozzi, Director of Library Services)

94. PubWeb, Inc.
(Mark Miller, President)
The Copyright Group, Inc.
(Eamon T. Fennessy, Chairman & Chief Executive Officer)

95. Minnesota State Colleges & Universities
(Dr. Harry Pontiff, Associate Vice Chancellor for Instructional Technology)

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96. University of San Francisco
(Vicki Rosen, Coordinator of Regional Library Services)

97. Old Dominion University
(Virginia O'Herron, Assistant University Librarian for Information Services)

98. University of Illinois at Urbana-Champaign
(Linda C. Smith, Professor and Associate Dean)

99. University of Houston Libraries
(Martha Steele, Head of Access Services)

100. University of Nebraska at Kearney
(Dr. Barbara Audley, Dean of Continuing Education, Michael Herbison, Director of Libraries)

101. Technical College of the Lowcountry
(Richard N. Shaw, Director, Learning Resources Center)

102. Naval Postgraduate School
(M. R. Bills, Deputy Superintendent, Captain U.S. Navy)

103. South Dakota State University
(Steve Marquardt, Ph.D., Dean of Libraries)

104. Olivet Nazarene University
(Kathy Zurbrigg, Director, Benner Library & Resource Center)

105. Southwestern Oklahoma State University
(Beverly Jones, Library Director)

106. St. Petersburg Junior College
(Dr. Susan Anderson, Director of Libraries)

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107. Arizona State University
(Sherrie Schmidt, Dean)

108. State Technical Institute at Memphis
(Rosa S. Burnett, Director, Library of Services)

109. Anne Arundel Community College
(Katherine Branch, Library Directory)

110. American Society of Journalists and Authors, Inc.
(Eleanor Foa Dienstag, President)

111. University of California, Los Angeles
(Howard Besser, Associate Professor, UCLA School of Education & Information)

112. Volunteer State Community College
(Virginia S. Chambless, Reference/Distance Education Services Librarian)

113. New Mexico Junior College
(Glen Gummess, MA.Ed., Media Resources Coordinator)

114. Christopher Newport University
(Catherine Doyle, University Librarian and Director, CNU Online)

115. California Western School of Law
(Andrea L. Johnson, Professor of Law and Director of CWSL Center for Telecommunications)

116. Louisiana State University
(Barbara Wittkopf, Reference/Distance Education Librarian,
Chair, LALINC Resource Sharing Distance Education Committee)

117. University of Maryland
(Judith Broida, Associate Provost and Dean, Office of Continuing and Extended Education)

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118. The Concord Consortium Educational Technology Lab
(Robert Tinker, President)

119. University of Texas at Austin
(Larry R. Faulkner, President)

120. Arista Knowledge Systems
(Jeffrey J. Munks, Chairman)

121. Columbia University Press
(Kate Wittenberg, Editor in Chief)

122. Time Warner
(Arthur B. Sackler, Vice President – Law and Public Policy)

123. National Association of College Stores
(Larry G. Daniels, CSP, Associate Executive Director — Industry Services)

124. National Association of Independent Colleges and Universities
(David L. Warren, President)

125. Dakota State University
(Deb Gearhart, Director of Distance Education)

126. Copyright Clearance Center
(Daniel J. Gervais, Director of International Relations and Acting Director of Rightsholder Relations)

127. Rogers State University
(Laura Bottoms, MA, MLS, Acquisitions and Reference Librarian)

128. University of Montana
(David Aronofsky, University Legal Counsel and Adjunct Faculty, Schools of Law and Education)

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DOCUMENT NO.

129. **Guildford Technical Community College**
(Keith Burkhead, Systems and Extension Librarian)

130. **Missouri Interactive Telecommunications Education (MIT-E) Network**
(Vicki Hobbs, Director, MIT-EI-TV Network)

131. **University of California**
(C. Judson Kling, Provost and Senior Vice President -- Academic Affairs)

132. **Georgia Department of Technical and Adult Education**
(Orien O. Hall II, Educational Technology Services Coordinator)

133. **Indiana State University**
(Louis R. Jensen, Dean of Continuing Education)

134. **Life University**
(F. Robert Slotkin, Wilson Strickland & Benson PC)

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DOCUMENT NO.

135. **Indiana University Kokomo**
Ms. Shelle Kelz, Dean

136. **Instructional Telecommunications Council**
Mr. Chris Dalziel, Executive Director

137. **American Psychological Association**
Mr. Marion Harrell, Assistant to the Director
PsycINFO

138. **Indiana Partnership for Statewide Education Copyright Committee**
Dr Fritz Dolak, Chair

139. **New Orleans Baptist Theological Seminary**
Mr. L. Thomas Strong III, Ph.D, Associate Dean of the College of Undergraduate Studies
Chair, Dept. of Theological Studies
Associate Professor of New Testament and Greek

140. **Educause**
Mr. Brian Hawkins, President

141. **The Learning Institute for Nonprofit Organizations**
Ms. Anne C. Keays, Attorney

141. **The Chicago Bar Association Computer Law Committee**
Ms. Anne C. Keays, Attorney

142. **The Association of America's Public Television Stations**
Ms. Lonna Thompson, Director, Legal Affairs

143. **Board of Regents of the University System of Georgia**
Mr. Corlis P. Cummings, Assistant Vice Chancellor for Legal Affairs

144. **Santa Rosa Junior College**
Mr. William C. Baty, Associate Dean of Learning Resources and Educational Technology

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DOCUMENT NO.

145. Dickinson State University
Mr. Bernnet Reinke, Library Director

146. The University of Oklahoma
Ms. Jan G. Womack, Ph.D, Associate Vice Provost for Academic Affairs

147. Troy State University
Dr Mac Adkins, Web Coordinator

148. Silver Lake College
Sister Maureen Anne Shepard, Vice President and Academic Dean

149. Marymount University
Ms Lynn Scott Cochrane, Dean for Library & Learning Services

150. Georgia State University
Ms. Beatrice Yorker, RN, JD, MS, Associate Professor of Nursing

151. University of South Carolina Aiken
Ms Jane H Tuten, Interim Director of the Library
Head of Technical Services

152. Pierce College Library
Ms. Sue Cole, Reference/Instructional Librarian

153. Michael Best & Friedrich LLP
Steven L. Ritt, Esq, Partner

154. North Carolina State University
Ms. Susan K. Nutter, Vice Provost and Director of Libraries

155. The Mabee Learning Center/
Oklahoma Baptist University
Mr. Mark Herring, Dean of Library Services

156. Montana State University
Ms Janis H Bruwelheide, Ed.D, Professor

157. Univeristy of Texas System
Darcy W. Hardy, Ph.D, Director, UT Telecampus

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DOCUMENT NO.

157. University of Texas System
Ms Georgia Harper, Office of General Counsel

158. Jamestown College
Ms. Phyllis Ann K. Bratton, Director, Raugust Library

159. Western Cooperative for Educational Telecommunications
Mr Russell Poulin, Associate Director

160. Fort Hays State University
Ms Cynthia Elliott, Dean of the Virtual College

161. University of Houston
Dr Marshall Schott, Associate Director, Distance Education

162. National Association of Secondary School Principals
Mr Stephen DeWitt, Government Relations Manager

162. National Association of Secondary School Principals
Ms Lenor Hersey, Director of Program Services

163. Cincinnati State
Ron D Wright, Ph.D, President

164. University of Kentucky
Mr Eugene Williams, Vice President for Information Systems

165. American University
Ms Diana Vogelsong, Chiar, Government Regulations and Public Policy Committee
Consortium of College and University Media Centers

166. AASA
Dr Paul D Houston, Executive Director

166. American Association of Educational Service Agencies
Dr Brian Talbott, Executive Director

166. National Rural Education Association
Dr Joe Newlin, Executive Director

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DOCUMENT NO.

167. University System of Maryland
Mr Paul Sweet, Associate Vice Chancellor, Res. Policy & Fed Relations

168. Black Hills State University
Mr. Ben Dar, Associate VP for Technology

169. The University of Oklahoma
Connie Dillon, Ph.D, Professor

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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 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 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 user's purpose, need, institutional affiliation, or 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 such 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]

BILLING CODE 1410-30-P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Conference Calls.

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming conference calls for NCD's advisory committees—International Watch and Technology Watch. Notice of this meeting is required under Section 10 (a)(1)(2) of the Federal Advisory Committee Act (P.L. 92-463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATE: January 20, 1999, 12:00 noon-1:00 p.m. est.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Lois T. Keck, Ph.D., Research Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004-1107; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax), lkeck@ncd.gov (e-mail).

TECHNOLOGY WATCH: NCD's Technology Watch (Tech Watch) is a community-based, cross-disability consumer task force on technology. Tech Watch provides information to NCD on issues relating to emerging legislation on technology and helps monitor compliance with civil rights legislation, such as Section 508 of the Rehabilitation Act of 1973, as amended.

DATE: January 15, 1998, 1:15 p.m.-3:15 p.m. est.

FOR TECHNOLOGY WATCH INFORMATION, CONTACT: Jamal Mazrui, Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004-1107; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax), jmazrui@ncd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

These committees are necessary to provide advice and recommendations to NCD on international disability issues and technology accessibility for people with disabilities.

We currently have balanced membership representing a variety of disabling conditions form across the United States.

Open Conference Calls

These advisory committee conference calls of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch and Tech Watch conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on December 16, 1998.

Ethel D. Briggs,

Executive Director.

[FR Doc. 98-33999 Filed 12-22-98; 8:45 am]

BILLING CODE 6820-MA-M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission, Indian Gambling Subcommittee.

ACTION: Notice of public meeting.

DATES: Thursday, January 7, 1999, 9:00 a.m. to 5:30 p.m. (PST).

ADDRESSES: The meeting site will be: Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, (206) 246-8600.

STATUS: The meeting is open to the public. However, seating may be limited. Members of the public wishing to attend are kindly requested to contact Dr. Kate Spilde at (202) 523-8217 to make arrangements.

SUMMARY: At the January 7 meeting of the Indian Gambling Subcommittee of the National Gambling Impact Study Commission, established under Public Law 104-169, dated August 3, 1996, the Members of the Subcommittee will hear testimony on Indian gambling issues as well as discuss the drafting of a subcommittee report to the full Commission.

CONTACT PERSONS: For further information on the agenda, meeting location or other matters contact Dr. Kate Spilde at (202) 523-8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

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With respect to potassium permanganate from Spain, Inv. No. 731–TA–126 (Review), the Commission found that both the domestic interested party group response and the respondent interested party group response to its notice of institution[1] were adequate and voted to conduct a full review.

With respect to potassium permanganate from China, Inv. No. 731–TA–125 (Review), the Commission found that the domestic interested party group response was adequate and the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.[2]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 18, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–4569 Filed 2–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–777–779 (Final)]

Certain Preserved Mushrooms From China, India, and Indonesia

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China, India, and Indonesia of certain preserved mushrooms, provided for in subheadings 0711.90.40 and 2003.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTVF).[2] Vice Chairman Miller and Commissioners Hillman and Koplan find that critical circumstances exist with respect to subject imports from China. Chairman Bragg and Commissioners Crawford and Askey find that critical circumstances do not exist with respect to subject imports from China.

Background

The Commission instituted these investigations effective January 6, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Coalition for Fair Preserved Mushroom Trade and its members: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.[3] The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain preserved mushrooms from China, India, and Indonesia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 19, 1998 (63 FR 44470). The hearing was held in Washington, DC, on October 15, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 11, 1999. The views of the Commission are contained in USITC Publication 3159 (February 1999), entitled *Certain Preserved Mushrooms from China, India, and Indonesia: Investigations Nos. 731–TA–777–779 (Final).*

By order of the Commission.

Issued: February 19, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–4575 Filed 2–23–99; 8:45 am]

BILLING CODE 7020–02–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–12B]

Promotion of Distance Education Through Digital Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of deadline for submission of reply comments.

SUMMARY: The Copyright Office is extending the period for submission of reply comments in the above-referenced study on the promotion of distance education through digital technologies.

DATES: Reply comments must be received in the Copyright Office on or before 5:00 p.m. E.S.T. on March 3, 1999.

ADDRESSES: All submissions should be addressed to Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. For information on formats, see **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Those filings sent by regular mail should be sent to the U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 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."

FOR FURTHER INFORMATION CONTACT: Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 23, 1998, the Copyright Office published a request for comments and notice of public hearing on the promotion of distance education through digital technologies, in connection with the Office's study of distance education in accordance with Section 403 of the Digital Millennium Copyright Act of 1998. (Pub. L. 105–304, 112 Stat. 2860) 63 FR 71167 (December 23, 1998). Comments were due to be filed by February 5, 1999; reply

[1] The notice of institution for both of the subject reviews was published in the **Federal Register** on Nov. 2, 1998 (63 FR 58765).

[2] Commissioner Crawford dissenting.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Askey dissenting with regard to Indonesia.

[3] On March 9, 1998, the Commission received notice that Southwood Farms, Hockessin, DE, had joined the petitioning coalition.

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comments were due to be filed by February 24, 1999.

The Office, however, has decided to extend the deadline for filing reply comments by a period of seven days, to March 3, 1999. The Office takes this action in response to a motion to extend the reply period, given the short time to respond and the extensive comments received.

Formats

The Copyright Office will be placing reply comments on its Website (http://lcweb.loc.gov/copyright/disted/). 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 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.

Dated: February 19, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99-4549 Filed 2-23-99; 8:45 am]

BILLING CODE 1410-30-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 12, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301)713-7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Office of Executive Assistance and Management (N1-40-98-1, 2 items, 2 temporary items). Records relating to the Department of Commerce's compliance with environmental laws and regulations pertaining to such subjects as recycling, hazardous waste reporting, and procurement of environmentally preferable products. Also included are files relating to implementation of

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APPENDIX D

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UNITED STATES COPYRIGHT OFFICE

DISTANCE EDUCATION STUDY

Demonstrations of Distance Education Programs
Using Digital Technologies

Library of Congress, Madison Building, Rm. G-45
January 25, 1999
2:00 p.m. - 5:00 p.m.

PROGRAM:

Introduction by Marybeth Peters, Register of Copyrights

Demonstrations:

GROUP ONE -

1. **CLASS** (Communications, Learning and Assessment in a Student-Centered System) - a University of Nebraska program whose goal is a complete accredited high school diploma sequence available on the World Wide Web. *class.unl.edu*

2. **Utopian Visions '99** - a project operated out of the University of Texas in which secondary school classes from all over the world subscribe to the program and submit reports about their own town or municipality over three hundred-year intervals to other subscribing classes. *www.en.utexas.edu/uv*

3. **World Campus** - a collection of undergraduate courses operated by Pennsylvania State University available through the Web and multi-media based technologies. *www.worldcampus.psu.edu*

4. **UI-OnLine** - Internet-based post-baccalaureate and undergraduate programs offered by University of Illinois, primarily designed for populations of Illinois citizens who do not have direct access to on-campus programs. *www.online.illinois.edu*

5. **UNET**- a curriculum offered by the University of Maine providing almost one hundred courses, mostly undergraduate, via interactive television, the Web, and video to remote classrooms across the state. *www.unet.maine.edu*

6. **Johns Hopkins Business of Medicine Executive Graduate Certificate Program** - a graduate credit certificate program developed to provide physicians

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with business management knowledge and skills and offered at twenty-eight networked centers across the United States. *www.scs.jhu.edu/busofmed*

7. **LEEP3** - a master's degree program in Library and Information sciences offered by the University of Illinois providing live Web-based instruction. *www.lis.uiuc.edu/gslis/leep3*

GROUP TWO -

1. **Wiley Interscience** - specific features of an Internet database of John Wiley & Sons' scientific journals that allow it to be incorporated by teachers into an on-line coursepack. *www.interscience.wiley.com*

2. **MicroMash** - a Harcourt Brace site offering a variety of on-line and disk based courses for continuing professional education, primarily for accountants and lawyers. *www.micromash.com*

3. **MathXL** - a Pearson/Addison Wesley developmental math tool designed to help students entering college to improve their math skills to pass college required courses such as Algebra. *www.mathxl.com/default.asp*

4. **HMChem** - a Houghton Mifflin site, developed collaboratively with the State University of New York at Binghamton, intended for use in conjunction with a Chemistry course being taught by a professor. *hmchemdemo.clt.binghamton.edu*

5. **Archipelago** - content-based multimedia and Web courses intended for colleges and advanced placement in high schools, developed by an educational multimedia publisher division of Harcourt Brace. *www.archipelago.com*

6. **KnowZone** - a Pearson/Addison Wesley hybrid CDROM/Internet product designed to teach mathematics at the elementary school level. *www.kz.com*

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APPENDIX E

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MARKETPLACE FOR LICENSING IN DIGITAL DISTANCE EDUCATION

For the U.S. Copyright Office
ISABELLA HINDS
APRIL 1999

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I. INTRODUCTION

Licensing has become an increasingly important tool for managing the delivery and use of educational materials of all media types in the last ten years. The emphasis on customized, supplemental educational materials has substantially increased the amount of transactional licensing (permissions) activity in educational institutions. There has also been substantial growth in the amount of scholarly materials published and delivered digitally under license, typically a site license which defines in some detail what material will be provided, for how long and who may use it and how. Because licensing for digital uses is still in its infancy, however, it lags behind analog licensing in consistency and efficiency.

The rapid introduction of digital technologies into distance education has created a new set of licensing needs to support course development and delivery, the distribution of related educational materials, and the subsequent uses of that course. Since today's digital technologies, described in detail in the Technology section of the Copyright Office Report, encourage the use of all types of media in a single course or distance education program, it is becoming more necessary to negotiate licenses for multiple types of content for a single course. Also, to meet the growing demand for digital content, a variety of organizations, including but not limited to traditional content producers, are creating new content and converting key collections of analog materials into digital form to meet market need. License agreements that govern digital material typically establish the eligible users and uses for the product, as well as a fee structure. In each instance, distance education is affected by the extent to which licenses are available for digital uses and, if so, the extent to which the terms and conditions for those licensed products accommodate the unique needs of the distance students.

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A. PURPOSE OF THE STUDY

This investigation was commissioned by the United States Copyright Office to provide a comprehensive description of the current licensing activities that impact distance education, particularly digital distance education. The purpose of this investigation was to examine, in as much detail as time and resources allowed, the relevant licensing policies and practices of both content owners and educational institutions. It was equally essential to understand how those policies worked in practice.

The goal was to review how the implementation of policy by both content providers and educational institutions (i.e., their day to day operations) impacted the effectiveness of their licensing transactions. By reviewing both policy and practice, it became possible to assess and interpret the often conflicting views of content owners and educational institutions about how well licensing works.

This in-depth review provided information to answer a number of questions. How was policy development instituted and what parts of the organization were involved? What types of licensing documents were in use? To what extent were licensing arrangements customized or standard? How easy, or difficult, were the licensing systems to use? Were there unique difficulties in licensing for digital distance education? What steps were being taken to improve efficiency and effectiveness? What was the level of investment in managing the licensing process? It was often difficult for content producers to address questions about licensing activities specifically focused on digital distance education. In general, content owner licensing policies and practices have not distinguished between uses for distance education and other analog and digital uses.

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That observation led to one additional line of inquiry in the investigation: what steps were content producers and educational institutions taking to anticipate and accommodate foreseeable demands for licensing activity to promote digital distance education?

B. METHODOLOGY

Information was gathered primarily through an extensive series of phone interviews. Respondents were identified through their written expressions of interest in the study in early December or their testimony at the Copyright Office Hearings conducted in Washington, D.C., Los Angeles, and Chicago in January and February. Those interviewed were in turn asked to identify colleagues with specific knowledge or experience who were subsequently contacted. Several associations were asked to identify knowledgeable members other than those who were selected to testify at the hearings. Finally, a sample of practitioners was selected at random from various lists online discussion groups or listservs concerned with distance education and they were interviewed. Few of those contacted by this method were aware of the study, but all were cooperative and eager to share their experiences.

Those interviewed on the content side included senior executives, counsels and general counsels, marketing directors, sales managers, licensing managers, rights specialists, and association executives. From educational institutions, interviewees included senior administrators, counsels and general counsels, directors and managers of distance learning programs, librarians, instructional designers, and faculty as well as association executives. Every effort was made to contact distance educators in a variety of roles and at all educational levels. Higher education interests were most heavily represented among those expressing interest in the Report and that emphasis was also reflected in data gathering on licensing.

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Licensing is less widely used or understood at the K-12 level. Within higher education, respondents were selected from various types of institutions (public and private, research universities and community colleges, institutions with established programs and those just starting out).

One of the interesting aspects of digital distance education is the appearance of for-profit entities successfully providing the same kinds of distance education to the same populations as traditional, not-for-profit educational institutions. Recently, several traditional universities have established their own distance education programs as for-profit subsidiaries. At least one major university, New York University, has established its distance education program as a for-profit subsidiary. A particular effort was made to include respondents from those for-profit organizations since they have a different standing under the current copyright exemptions than their not-for-profit counterparts.

In addition to content owners and educational institutions, educational licensing activities are influenced by a variety of intermediaries, both not-for-profit and commercial organizations. Not-for-profit licensing collectives have served as licensing agents for content owners for music and text publishers for a number of years.

New technologies and emerging markets such as those in digital distance education have given rise to other types of collectives and commercial organizations attempting to exploit these opportunities. New, not-for-profit, collectives have been established for the specific purpose of converting valuable content into digital form for licensing to educational institutions. Several commercial entities are developing products and services that are affecting, or will soon affect, licensing for digital distance education. These include

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commercial providers of digital information, commercial entities concerned with rights management for digital content, and print, and the software and service providers marketing the technologies used in distance education.

In addition to the interviews, a number of license agreements were analyzed. Wherever possible, data on licensing activity were collected from both content owners and educational institutions. The data analysis for license activities directly related to digital distance education was limited by the lack of systematic data, regularly collected, clearly identified, and categorized consistently across and between content owners and educational institutions. Most of the time, the amount of data available was simply too small to support meaningful analysis.

Finally, several key publications in higher education and conference/workshop listings were monitored systematically over the first quarter of 1999 to identify the frequency and nature of discussions related to copyright licensing for digital distance education.

In sum, numerous individuals engaged in policy development, administration, development of materials, and instruction contributed their observations to this licensing investigation. A list of those interviewed is appended to this Report. The results of this investigation into licensing and digital distance education are presented below in four sections:

II. Role of licensing in digital distance education

III. Licensing Policies and Practices: Educational Institutions

IV. Licensing Policies and Practices: Content Owners

V. Organizational, commercial, and technological initiatives in digital licensing

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II. ROLE OF LICENSING IN DIGITAL DISTANCE EDUCATION

The first task in understanding the role of licensing in digital distance education is to identify the types of licenses, the primary kinds of course materials, and the nature of their uses. It is then possible to understand the relatively low volume, and the inherent problems, of licensing material for use in digital distance education.

A. TYPES OF LICENSES

Licensing has been described as the practical exercise of copyright ownership. It has become a much more widely used tool in educational institutions, allowing reproduction, distribution, repurposing, access, and storage to course and resource materials of all types. Two forms of licensing have predominated in the digital world: transactional licenses and site licenses.

Transactional licenses, often referred to as "permissions," are most frequently employed for an ad hoc use of a small portion of the copyrighted work for a specific purpose with a specific, and typically defined, target audience. Examples in digital distance education might include course pack permissions, electronic reserve permissions, permissions to include a clip from a video in a course module. Transactional licenses for educational purposes are typically characterized by one time use fees, simple form agreements, and limited duration (i.e., the permission is good for a short time frame). Transactional licenses are not always restricted to portions of a work, particularly for certain types of works such as art images, photographs, poems when the use of the "whole" work is likely to be required. Transactional licenses are also described as "after market," indicating that the desired use was not necessarily anticipated when the product was initially created. Typically a transactional license

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is a relatively low value transaction with a high administrative cost. Those administrative costs can appear particularly burdensome in total when a transactional license is secured over and over for the same piece of information for essentially the same type of use.

Site licenses define for specific materials the class of eligible users and uses in a specified length of time and typically include complex provisions regarding technology, security, access, and archiving. They are becoming increasingly important to educational institutions, generally for resource materials, as significant collections of information, data, images, etc. are being developed and delivered in electronic format. An example of a site license is an academic press database of journals that licenses an entire university to access and use the journal database. Such licenses typically are the result of extensive negotiation, much of which is driven by their "before market" use. In such negotiations, the licensee attempts to define as inclusively as possible the users that may wish to access the information, the uses they may reasonably contemplate for the information, and other provisions that will enhance the overall utility and value of the information to the institution. Licensors must balance the range of uses with an appropriate price for the information as well as protection of the intellectual property from misuse or use that could preclude the sale of future products. Pricing structures as well as actual prices are an important component of these negotiations and can impact how often, how much, and how widely the information is used.

It should be noted that the licensing of electronic information in the scholarly community has become a major focus of experimentation, development, and debate for the last five or more years. The estimated value of electronic products acquired by educational institutions today is over $2 billion. The licensing of electronic resources has been the subject

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of articles in scholarly journals as well as the focus of conference proceedings and reports since the mid 1990s. Numerous conferences, both face to face and electronic, as well as workshops, have been held on the relevant topics of copyright issues, contract law, the economics of publishing and acquiring electronic information, and the management of electronic property.

B. FORMS OF MATERIALS USED IN DIGITAL DISTANCE EDUCATION

Before describing the kinds of material that may be licensed within a distance education course, it is helpful to understand why most primary course materials used in digital distance education do not involve licensing. Currently, the primary course material for most distance education courses at every level, including many graduate level courses, is a core print textbook purchased by students. Many institutions arrange for their own college bookstore to provide phone, fax, or e-mail ordering for distance students. The materials are then shipped or mailed directly to the student. In the last two years, several national online college bookstores have been established. These include eFollett (www.eFollet.com) and Varsity Books (www.varsitybooks.com). These operations serve all types of students including distance students, emphasizing convenience at a low cost. Distance students taking a course at or near a satellite location or campus may purchase the primary course materials at that site. Whether these core materials are in the form of a conventional analog text, a digital format such as CD-ROM's or floppy disks, or some mixture of the two, they are sold, rather than licensed, to the student.

Increasing numbers of course texts are now accompanied by supplemental materials, (i.e., data sets, study guides, and, as the technology improves, videos, simulations, and other

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relevant materials) delivered over the World Wide Web. Use of the World Wide Web expedites delivery and allows for continual updates and enhancement of the material. Educational publishers, the primary producers of these materials, currently provide much of this material at no charge. In other instances, access is controlled by the sale of passwords to students who purchase the material. This system does pose some security risks; for example one student might resell her password to other students in the class who opt not to purchase it at full market price. In general, this model replicates the standard business model for educational materials, requires no licensing negotiations, and relies primarily on traditional distribution channels and payment systems.

In addition to materials purchased by the student or provided by content owners for free, digital distance education programs also rely on a range of other material to meet their pedagogical needs. Licensing is one gateway for meeting those needs. However, licenses to make a digital copy of preexisting content and/or to transmit that content in digital form are today a very small portion of the total activity. The majority of licensing activity, even in distance education sources, is still for analog reproduction of material to be sent to enrolled students.

The use of materials to supplement the core text book is a common practice in undergraduate and graduate distance education courses of all types. Providing these additional materials to students may involve excerpting, compiling, copying, distributing or displaying preexisting content, in either analog or digital form.

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1. Course Packs or Course Anthologies.

The most frequent form of supplemental materials for distance students, as well as traditional students, is the analog "course pack" or custom "course anthology" which has grown in popularity over the last decade. These custom course materials are compilations of journal articles, book chapters, magazine and newspaper articles, images, and original content typically developed by the instructor. This material has been selected and/or created by the instructor. Currently, from 75 – 100% of these materials are still printed and mailed to distance education students once a paid order is received. Policy and practice at most educational institutions, particularly in the aftermath of two key court decisions[1] require that most of these excerpts be licensed from the copyright holder, or its agent. This broad scale transactional licensing, or permissions processing, for course pack material has been developed over an eight year period. Though systematic data is not readily available, the number of permissions transactions related to course packs may exceed one million on an annual basis. For digitally delivered course packs, however, the proportion of licensing is minimal. A well established collective copyright permissions service for text, the Copyright Clearance Center ("CCC"), has just recently started providing some licenses for electronic course packs. Thus far, the response has been minimal although it is expected to increase.[2]

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[1] Basic Books Inc. v. Kinko's, 758 F. Supp. 1522 (S.D.N.Y. 1991); Princeton University Press v. Michigan Document Svcs., 99 F.3d 1381 (6th Cir. 1996).

[2] *See infra* section V(A).

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2. Electronic reserve systems.

Electronic reserve systems support both traditional and distance learning students and have been growing in colleges and universities since 1995. Such systems, now in active use in 200 to 300 colleges and universities, have replaced the traditional Reserve Desk at which students could check out specific, supplemental course materials assigned by the professor. A traditional Reserve Desk circulated materials for a limited period of time. Many students made personal photocopies of those items for subsequent use. In an electronic reserve system, digital copies of the selected material are made and stored by course for access by students enrolled in that course.

These electronic reserve systems allow the library to scan the supplemental course materials assigned by the faculty (usually journal articles, newspaper excerpts, and book chapters) into one of several available software systems. Electronic reserve systems are comprised of hardware components (a flatbed scanner, secure server, and networked workstations), software (document management and administration, user authentication and access controls), and administrative systems (procedures for identifying enrolled students, for administering the material, and the like). These systems, some of which are commercial and others of which have been developed within university libraries, manage the scanned materials (generally text materials); manage access for enrolled and authorized students only, generally by password; and may restrict further copying or distribution of the materials. The earliest systems limited viewing to workstations in the library, but today authorized students can often access these materials from any desktop including those in their dormitory rooms, at home, or both.

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Content owners and educational users, particularly librarians, are divided over whether electronic reserve systems require licensing or may properly be considered fair use. Most publishers of all types of text view an electronic reserve system as a "digital course pack" and insist that a license is required. On the other hand, most publishers refused to license such digital conversion until early to mid-1998 and some number still do. Many librarians, on the other hand, have contended that the use of digital technology does not alter the fundamental nature of the Reserve Desk activity which had long been widely permitted without licensing even when libraries made their own print copies to ease congestion at peak use periods. In most instances in which libraries contend fair use, however, they do follow the practice of limiting access to students enrolled in the course, provide on screen information on copyright and fair use, and place restrictions what students may further do with the materials.

Because of the uncertainty as to whether these materials can be made available under fair use or require a license, electronic reserve systems vary in the type of content included. Systems are often initiated with only non-copyrighted material; some systems incorporate copyrighted materials, but only those readings that are not required for the course;[3] others actually include required, copyrighted materials which may in fact also be purchased in hard copy form at the bookstore.

A minority of institutions with electronic reserve systems do seek licenses for these materials. This small number of electronic reserve requests comprise over one half of all

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[3] This approach reflects the distinction between required and non-required reading made in the preliminary Electronic Reserve Guidelines discussed during the CONFU process but never adopted.

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requests for digital conversion of text materials reported by a key sampling of publishers (educational, scholarly, university presses).

3. Preexisting content in the course of instruction.

Overwhelmingly, the material delivered today in digital format is original content developed by instructors and staff in various programs. Increasingly, as technology improves and faculty competence and confidence with the use of that technology grows, instructors opt to convert preexisting content in all media (text and images primarily) into digital form so that it can be delivered directly with course materials or incorporated into their lesson plan.

Determining the amount of such preexisting content currently converted into digital form for inclusion in, or distribution with, digitally delivered courses was surprisingly difficult. Based on reports from a variety of educational institutions, it appears that at present this activity is relatively limited in volume, concerned primarily with text and to a lesser extent audiovisual materials.

C. COMPLEXITIES OF THE LICENSING PROCESS

It is easy to appreciate the hurdles faced by both educators and owners in attempting to license and use works. On a regular basis faculty and staff involved in digital distance education make decisions about when to license or when to rely on fair use. They evaluate whether a license offered will permit their students to use the material in the ways they are likely to need and want. They also must evaluate whether the material is offered at a "reasonable value," what portion of their budgets to allocate to license fees, and whether to pay those license fees directly or pass them along to students. Similarly, representatives of content owners make decisions about whether to offer a license in response to a specific

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request and if so, what terms and conditions to offer and how to establish fees. Both licensees and licensors are engaged in multiple transactions with multiple types of institutions or content owners with different needs and levels of resources. Both licensees and licensors must find ways to manage this complex process practically and cost effectively. Resource constraints, inexperience with transactions of this type, and operational issues affect their efforts as decidedly as the legal and policy frameworks within which they work. These practical considerations, including level of staff resources and budgets as well as decidedly different frames of reference regarding the purpose of licensing profoundly affect the perceptions of all parties on how copyright licensing is working.

1. Growing Pains in Licensing Digital Uses.

Experience with licensing for digital uses of any kind is generally limited to the last two to three years. The volume of licensing activity specific to digital distance education in all media is small. As a result of that lack of experience, policies and license agreements themselves are in evolution. The issues from the content owner's perspective are complex: what uses and users to allow, how to evaluate the technological basis for securing the material, how to evaluate the impact of such licensing on future product sales, how to value and price the material for this type of use. The combination of inexperience and complex issues often results long delays in decisions and irregular pricing, terms and conditions.

The frustration from educational institutions is intense. Pressure to compete with successful for-profit distance education organizations, expectations of faculty and students increasingly adept at technology, and the proliferation of course technologies combine to create a compelling sense of mission that is at odds with focus of content owners on protection of

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their property. They complain of inability to find content owners, long delays in response time, or no response at all, and of unreasonable prices, terms and conditions. Educators and librarians testified about the importance of supplying distance learners with adequate library resources. The growing amount of text and image material acquired under license in digital form creates the potential for distance learners to have practical access online to many of the library resources of the institution in which they are enrolled.[4] However, many of the site licenses under which the libraries access material do not allow, or charge higher fees for, off campus access for remote students.

Licensing activity for converting preexisting content into digital form and for delivering electronic material over digital networks is comprised dominantly of text materials; audiovisual materials (primarily educational videos and television programming) rank second. Other media types still rank a very distant third. The technology for using this material, however, is improving. Equally important, the training, confidence, and competence of faculty with that technology is also increasing. The predictable result is that more demands will be placed on licensing for images, music, and motion pictures. It is difficult to project the exact nature of those needs or the rate at which demand will develop. Because the overall market for materials is competitive and has very significant revenue potential, respondents from both educational institutions and content owners predict that new products, i.e., digital content, will flow rapidly into the market. It is unclear how the availability of a significantly

[4] We have already seen that certain for-profit organizations providing digital distance education are committed to making a rapid transition to licensing electronic collections of full text articles to meet the information needs of their distance students.

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increased volume of high quality digital material will impact the nature and volume of uses for preexisting content in the digital distance education market.

Policy and operational weaknesses in the licensing systems of both licensees and licensors for analog materials are carrying over into the digital environment. Content owners and educational institutions have not developed common definitions, shared understandings and expectations, or agreed upon standards of practice, in any area of licensing. There are few economic incentives to resolve these problems. The cost of administering licensing systems is high and the revenue streams rarely more than five figures annually even for the largest publishers. There are few forums in which to collaborate.[5]

2. Identifying and Locating Copyright Owners.

Problems also arise for educational institutions, and content owners alike from materials whose copyright owner cannot be readily identified or, if identified, cannot be located, the so-called "orphan" copyright owners. Given the active role of librarians in many distance education programs and the proliferation of search tools and bibliographic resources available online, the copyright owner can eventually be identified for most text material. The World Wide Web also offers access to databases, college and university web sites that provide faculty names, and other resources that help locate individual authors and creators. Though publisher practices vary, some do provide contact information for their authors, illustrators, and other individual copyright owners when permission, or in some instances additional

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[5] There are some efforts underway to begin a dialogue, however. A conference in March 1999 on Problems in Scholarly Communication, sponsored by the Association of American University Presses, the American Association of University Professors, the American Council of Learned Societies, and the Association for Research Libraries, brought publishers, librarians, university officials, and technologists together around common concerns. It identified distance education as one of its three key topics.

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permission, is required from that individual. In other media, audiovisual works for example, established practice has the producer or distributor contacting other stakeholders for necessary rights clearance or other use-type permissions.

New products to expedite the process of identifying and locating those individual organizations are being encouraged by digital technology as are online versions of established bibliographic and reference tools. These tools have proved useful to the educational institutions that have them but they are expensive to develop and even more expensive to maintain and priced out of the reach of many smaller educational institutions. One new model of interest for text products is PubList (www.publist.com), an Internet directory of publications. Built on other database products, this World Wide Web tool is available at no charge to users. It promises to provide locator information for publications, as well as links to other services such as rights and permissions, for a growing list of text publications.

Users report frustration that it is sometimes the most critical journal article, sound clip or film footage for which they cannot get permission. In fact, it is often the most valued or sought after authors and artists who in today's market can successfully negotiate to retain specific rights or copyright ownership altogether. If this trend persists, the diversity of copyright owners that a single user may need to contact could increase exponentially.

The Author's Registry, created by a consortium of writers' organizations including the Author's Guild, the American Society of Journalists and Authors, the Dramatists Guild, and the Association of Authors' Representatives, is seeking to build a repository of data to assist in the identification and location of thousands of authors for the purpose of remitting licensing royalties to them, initially via agreements with publishers.

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In the future, the importance of individual authors, illustrators, photographers, and other creators in the licensing process will likely increase. Authors, indeed all creators, are becoming more attentive to exploiting their rights for electronic uses. They are also increasingly capable of disseminating their works without organizational support. Whether authors will seek to license their works directly, or through a collective licensing agent, or continue to grant that authority, under contract, to a content producer remains to be seen. It is likely, however, that individual creators will become an increasingly vocal presence in ensuring that the exclusive rights of ownership and the revenues associated with licensing prerogatives are not exercised only by large, visible commercial organizations.

Tools for identifying, and locating, copyright owners are also most readily available for text materials. In other media, such reference tools are much more difficult to find, but new products are in development. For example, Academic Press has recently launched The Image Directory, a central and comprehensive repository of information on images of all kinds.

The Image Directory, which includes "thumbnail," i.e., small, low resolution images, is offered to institutions under a license agreement with fee structures designed to accommodate educational institutions of various sizes. The amount of information and number of images catalogued in the Image Directory grew so rapidly that it had to be removed from the market in October 1998 so the product could be transferred to a more robust database platform. The product will be back on the market in mid to late 1999 with additional contributions from museums, art institutes, and other collections.

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These underlying problems will be examined in greater detail below in reviewing how both educational institutions and content owners develop and implement their licensing systems.

III. LICENSING POLICIES AND PRACTICES: EDUCATIONAL INSTITUTIONS

Universities committed to distance education, whether launching new initiatives or moving their established programs into a digital environment, have spent considerable time, effort, and money organizing their resources to support these activities. At a minimum, educational institutions have invested in hardware and software; established necessary administrative units; added or enhanced functional areas such as instructional design; and provided training, technical, and support services to faculty. Some have contracted with a range of commercial vendors providing sophisticated software and service packages to support digital distance education. These packages allow universities to outsource their technology needs, and in some instances, training and support needs as well. Though financial information is difficult to obtain, and to validate, various sources estimated total costs, inclusive of staff time and overhead, of developing a complete digital distance education course for delivery over the World Wide Web at $10,000 to $15,000 per course. There are, however, also faculty cited examples of activities at much lower costs.

Copyright licensing is very rarely identified as a specific consideration in planning a distance education program. For example, in the course of this investigation, the programs and agenda of over 25 conferences and workshops for distance educators were reviewed. Only one had any reference to copyright or licensing.[6]

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6 That instance was a workshop designed for academic administrators to discuss faculty creation and (continued...)

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A. GENERAL ORGANIZATION OF LICENSING ACTIVITIES

Typically there is no central locus of responsibility for copyright licensing for any purpose in educational institutions and little formal or informal coordination among the various administrative units engaged in acquiring permissions and negotiating licenses. As a result, there is little opportunity for sharing data, successful negotiating strategies, or efficiencies in process and practice. No respondent interviewed could confidently identify all the units on their campus involved in licensing generally, or for digital distance education in particular.

Those interviewed also described a number of different models for involvement by university counsel in licensing activities. The respondents from larger research institutions reported "consistent involvement and accessibility, especially for issues relating to digital uses of any kind," while others reported limited access to legal advice in their institutions.

Though licensing activity suffers from fragmentation, the established model for licensing of virtually all kinds is the availability of a centralized, "expert" support staff to provide guidance to faculty, manage the workload, and to some degree interpret university policy and directives. Few of these central licensing resources, whether for course packs, image resources, or audiovisual materials, accept responsibility for monitoring whether licenses are obtained. Instead, they assist faculty in their copyright licensing activities, still a tedious, labor intensive process. In addition, there may be many different "experts" on any campus, each dealing with a different type of work.

In most colleges and universities today, particularly since the Basic Books Inc. v.

(...continued)
ownership of distance courses. The workshop was heavily subscribed almost immediately.

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Kinko's, 758 F. Supp. 1522 (S.D.N.Y. 1991), and Princeton University Press v. Michigan Document Svcs., 99 F.3d 1381 (6th Cir. 1996), decisions regarding course packs, there is a designated department or campus organization, such as the bookstore, which is responsible for licensing materials for course packs. Audiovisual materials are licensed through a separate academic department or multimedia center. Music performance licenses are normally negotiated through the purchasing department.[7] Image resources are licensed by yet another appropriate department or specialized library or resource center. The central library in most universities is also deeply involved in license negotiations for electronic products and for electronic reserve systems as well.

As a result of this fragmentation, the resources that a single faculty member needs to license a range of materials for a single digital course or program in distance education may be scattered through the campus. In fact, individual faculty members were often not aware of resources available on their campuses, particularly if that resource was concerned with media and materials not commonly used in their disciplines. Content producers of audiovisual materials in particular report a growing volume of calls from faculty with no experience in licensing in that media and little knowledge of the relevant copyright law.

Historically, the reliance on librarians and media specialists for copyright and licensing advice and information was the result of their expertise, their role within the information system in the institution, and their knowledge of, and working relationships with,

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[7] Music performance licenses for educational institutions have changed little in terms or conditions for many years. Fee schedules are negotiated with the designated licensing collectives on a national basis by the National Association of College and University Business Officers and the American Council for Education. Individual institutions make the purchase decision from among several models but have, as a practical matter, no option to negotiate individually.

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content owners of all kinds. As electronic reserve systems evolved, copyright and licensing issues, where applicable, were usually managed by the librarian, although there are some institutions that require faculty to obtain them. Recently, initiatives to centralize permissions and licensing activities reflect institutional concerns about liability, control, and efficiency as well. This is particularly true with respect to analog course pack licensing which represents the most recent case study in the development of a relatively high volume transactional licensing system around a specific educational need. The Kinko's decision in 1991, and the Michigan Document Services decision several years later, intensified the discussions of what constituted educational fair use. University counsels and administrators were concerned about the potential liability of their institutions in the wake of these court decisions although neither decision involved a not for-profit educational institution. They also took note of the number of faculty who appeared to believe that any educational use was a fair use. Finally, universities assessed the administrative costs and burdens of the licensing process itself. At the same time in the mid 1990s, a number of commercial organizations began to explore the potential market for course pack production and sale. These vendors developed a commercial market for services to produce and sell course packs grew up at the local, regional, and national level. Because of the court decisions in the "course pack" cases, the major commercial vendors made "copyright clearance" one of their hallmark features when seeking commercial relationships with colleges and universities.[8]

[8] Section V of this Report discusses the different practices in copyright licensing of commercial organizations interested in advancing digital distance education.

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By the mid 1990s, most four year colleges and universities had a centralized, designated locus of responsibility for obtaining licenses for creating course packs. Management of the process might reside with the university print center or independent book store, could be outsourced to a leased bookstore or other course pack production vendor, or occasionally functioned as a separate office within the university's own operations. These centralized units set up systems to locate copyright owners; develop and maintain databases of contact, ownership, policy and pricing information for content owners; track permissions and make payments. In a functional sense, these units replicated the "resource expert" role in copyright management that librarians and multimedia specialists had traditionally filled.

These central clearing houses for course pack permissions often used the services of the CCC, a collective licensing agent which established an Academic Permissions Service (APS) in July, 1991. The APS provided centralized authorization for transactional licenses from thousands of domestic and international print publishers. As their experience grew in the mid to late 90's, the campus-based clearinghouses also began to negotiate direct relationships with individual content providers, to reduce the extensive administrative burdens for users involved in tracking and paying for hundreds of permissions on an individual basis, term by term.

Electronic reserve systems were not envisioned as a new use for a new type of student, but as the application of advanced technology to ease access to, and management of, large quantities of reserve material. As indicated earlier, there are significant differences of opinion and practice among institutions as to whether electronic reserve systems fall squarely under fair

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use or whether the creation of a digital copy in and of itself requires a license, regardless of the nature of the use.

The role of librarians and other resource specialists in the negotiation of licenses for large scale collections of electronic content, whether text or images or music, will be discussed later in this section.

B. LICENSING PRACTICES FOR DIGITAL DISTANCE EDUCATION.

In institutions that encourage and/or require faculty to secure licenses for digital distance education, typically there is some central resource to facilitate the process, though not always. Invariably, respondents who reported that licensing was expected described the policy as "conservative," "we're extra careful here," or "better to be safe than sorry." Faculty and staff are not always convinced it is legally necessary, but are taking no chances. This ambiguity reflects a pervasive uncertainty across most campuses about what constitutes fair use in a digital environment. The fair use/licensing discussion will be detailed further below. Several policy experts pointed out that this uncertainty may be at least partly responsible for the heightened sensitivity to the difficulties of the process and the resentments about license prices. Although underlying attitudes about licensing go beyond the scope of this study, they appear to be quite relevant to a licensing process that can be obviously contentious between the parties at a number of points.

1. Management.

It has been noted several times that the actual experience base for licensing preexisting content for digital distance education uses is very small. With that point reemphasized, some

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general observations can be made based on the consistency of the available information on the licensing experience.

The level of resource allocation for managing the licensing process, the level of training offered to support that process, and the policy direction and administrative support provided all impact on the success of the licensing process within educational institutions. More positive reports came from those institutions where:

- staff were allocated to the purpose,
- the university counsel was accessible,
- resource materials and relevant data bases were available, and
- budgets for royalty fees were allocated.

These organizations reported that they could identify and locate copyright owners virtually all the time; secure an answer, typically a grant, virtually all the time; and negotiate an acceptable price about 85% of the time. Frequently it was also the case that those charged with digital distance education had prior experience with managing licensing requests as well. Some staff were convinced that their prior business relationships with a variety of content owners have helped their success. It was also suggested by one experienced licensing professional that the status of the institution he represented was a factor in his high success rate. Content producers of all types welcomed the opportunity to have their material associated with this institution's courses. This is one example of the sometimes personalized nature of the licensing process. Most content producers do have a standard fee and a standard process for licensing and those have become more institutionalized in recent years. It is still relatively easy, however, for educational institutions, individual faculty members, or academic

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departments to secure "special arrangements" by calling upon other business relationships, for example sales or editorial, with the content producer. These special privileges have been granted in some instances for digital content as well.

The experience of for-profit organizations providing digital distance education with licensing should be noted. These companies believe that they do not have fair use privileges under the current law. As a result, it has been their policy to license all materials in whatever form they are delivered to students. Most materials are currently printed and delivered via mail rather than transmitted digitally. One such organization, however, has initiated an aggressive plan to secure licenses with a number of information aggregators, including Ebsco Publishing, UMI, and Information Access Company (IAC) who provide full text articles in electronic form. It is believed that these electronic information products will provide up to 80% of the articles faculty are most likely to use. The goal is to negotiate flat fees to ensure that student use is encouraged and that costs are predictable. Access to these products is expected to supplant reliance on licenses for print materials, reducing production and distribution costs and improving the quality of access for students. Efforts are also underway to secure digital licenses from major content producers whose materials are not included in such products.

2. Cost Burdens.

In the business model which governs supplemental materials delivered to students in print or videotape, via US mail or shipping services, royalty fees are paid directly by students at the point of sale. When those materials are delivered in digital form, the cost burden usually shifts to the budget of an academic department, the library, the distance learning office

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or other institutional budgets. At current volumes of digital licensing activity, the total cost burdens are modest. It is unclear how policies and practices may change if and when the volume of activity and the associated costs grow.

Currently about one third of permissions for licenses to digitize material are offered at no charge. As a point of reference, less than 20% of materials licensed in print course packs is offered at no charge. Although several licensing offices reported that all the fees proposed by content owners were acceptable to them, at least two reported that up to one third of the fees were unacceptably high. One of those institutions also reported that their budget for licensing fees had not increased for five years. Generally, content producers whose print license fees have always been higher than the norm now charge higher than average fees for their new digital licenses as well.

3. Access Controls.

Provisions for control of access have a decided affect on the availability of resources for students in digital distance education. Many license structures also rely heavily on the number of users with access to the material. Developing mutually acceptable definitions for quantifying and charging for distance education students is a challenge still ahead for educational institutions and many content owners.

It is simply not clear whether issues of access for distance students reflect the state of maturity of this market or more fundamental policy differences. Access problems for distance education students do arise directly out of the terms and conditions of the licenses for electronic products offered to universities. Other problems are the indirect result of

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administrative procedures. Some publishers do intentionally restrict access to their electronic products to individuals in the actual library building.

A number of scholarly publishers, on the other hand, expressed surprise that their products were not available to students officially enrolled in formal distance education courses. These restrictions are sometimes an unintended by-product of the established means of authenticating students and faculty so that they may access electronic products. For example, authenticating IP addresses has emerged as a common means for controlling access because the technology for doing so is widely available and much of the work can be automated, reducing the administrative burden for the library. Because distance learners are typically dialing into the university network, they cannot be routinely authenticated by this method. Technological and contractual solutions to this problem are available but are dependent upon the priority both librarians and content owners accord to access for distance students and the related resource burdens of alternative approaches that do accommodate the needs of distance learners.

C. LICENSING AND FAIR USE

Defining fair use in a digital age for educational institutions goes far beyond the scope of this effort. However, every discussion about licensing with faculty, administrators, and university counsels begins or ends with a reference to fair use. As one counsel at a major state institution articulated it, fair use is underrepresented by the various guidelines and over-represented by those who say any use by an educational institution is fair use. The challenge is defining what falls in between, particularly in a digital distance education environment.

There is a pervasive sense of uncertainty about what constitutes fair use in a digital environment at every level of the institution. University counsels typically focus on the lack of

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case law, the absence of any guidelines ("even if they weren't law, they were something"), and an overall lack of experience with digital fair use in all settings, including digital distance education. Others within the university are somewhat more plain-spoken. As a distance education coordinator at a major public university commented, "Everyone's afraid that even though they're trying to do the right thing, they're going to get skewered."

"Rules of thumb" about when to rely on fair use and when to license were reported in most interviews with educators. One faculty member described fair use as "whatever the professor feels comfortable with." Another defined fair use as "anything that doesn't take a sale out of an author's pocket." Guidance and consultation on copyright and licensing issues is becoming more available to faculty. In fact, several universities have established policy and/or practice centers specifically to advise the university on copyright issues. Several are discussed in detail below. On a day-to-day basis, many faculty and staff take a more direct and action oriented approach to the "analysis" which can best be described as exercising the "fifth factor." The "fifth factor" or "good faith effort" represents an effort by faculty or staff to cope with that murky line between what constitutes a fair use in a digital environment and what constitutes a use that requires a license. The approach was summed up by one law school instructor in a digital distance education course this way: "I think I probably should get permission to put materials online for my digital distance education course. Therefore, I try to identify the copyright owners and seek permission. If I can't identify or locate the owner, then it's a fair use. If I can identify the copyright owner and I request a permission and get approval, I will pay the royalty fee and use the material. If I get a refusal, I don't use the material. If I don't get an answer in a "reasonable time," then it's a fair use."

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Standards for what constitutes a "good faith" effort to locate and identify copyright owners or a "reasonable time" are idiosyncratic to each institution and even to the individual with the responsibility. Like "reasonable price," these standards are rarely discussed or evaluated. However, many individuals with day to day operating responsibilities for licensing, most of whom are not copyright experts, describe their licensing activities in terms that parallel the process sketched out above. Based on the comments of respondents, the "good faith" effort seems to satisfy a sense of professional responsibility as well as a sense of responsibility to the educational institution while functioning in an environment characterized by rapid growth, demanding faculty, and institutions communicating a strong need to expand digital distance education.

To reiterate, defining digital fair use goes far beyond the scope of this study. In the view of many practitioners involved in digital distance education, however, the definition of one is perceived as impacting the scope of the other. It is unclear at this point where progress will come first: through the emergence of a more widely held consensus by educational institutions of what they believe constitutes digital fair use, and how that impacts on digital distance education; through the development by content owners of licensing systems better adapted to the use of all types of media in digital form;[9] or through a voluntary or mandated process for formulating guidelines or some other authoritative guidance on what constitutes digital fair use.

D. COPYRIGHT POLICIES

[9] The efforts to date of content owners and their intermediaries is discussed in Section IV of this Report.

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In the absence of specific administrative direction regarding the need for securing licenses for a particular type of educational use, the school's copyright policy is the basic framework within which faculty and staff evaluate their need for licensing copyrighted material for a specific use for a digital distance education program.

1. Variety of Models.

Copyright policies vary considerably in their formulation. Some, such as the recent Statement from the University of California system,[10] attempt to articulate a set of principles to guide faculty in their decision making. A second model can be found at Indiana University/ Purdue University at Indianapolis ("IUPUI"), which establishes a strong statement regarding the unique role of educational institutions in relation to intellectual property and then offers guidance on how to apply that framework in individual situations.[11] The third model is found at the University of Texas, which attempts to translate the concepts of copyright and copyright compliance into practical examples of acceptable institutional behavior.[12]

Virtually all four year colleges and universities report having some sort of intellectual property policy, but only about 50% of such institutions have a current policy that includes significant consideration of digital technology. Community colleges are somewhat less likely to have a copyright policy but most do. Virtually every university contacted indicated that its

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[10] University of California Copyright Legislation and Scholarly Communication, Basic Principles, (www.ucop.edu/irc/wp/wp_Docs/wpd0006.html).

[11] Indiana University, Purdue University, Indianapolis Web Site (www.iupui.edu/~copyinfo/).

[12] Association of Research Libraries Office of Scholarly Communication Web Site, (www.arl.org/scomm/copyright/Texas.htm).

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copyright and intellectual property policy was currently under review or in revision, an overall process that may take up to two to four years including final faculty adoption.

The two most commonly cited reasons for that current review of the copyright policy were the impact of certain provisions of the Digital Millennium Copyright Act ("DMCA") and vigorous campus discussions about ownership of the university's own intellectual property, particularly courses developed for delivery over the World Wide Web.[13] Both of these issues, the implementation of provisions to limit liability for educational institutions under the DMCA, and ownership of World Wide Web courses, go beyond the scope of this study.

However, the context in which licensing policies and practices are being developed as well as the relative priority of those issues is relevant. Interest in revising or reviewing policies to meet the criteria established in the DMCA have also resulted in the creation, especially on many larger campuses, of a committee comprised of senior administrators, a university counsel or sometimes outside counsel, as well as key staff and faculty, and discussion of university-wide copyright concerns sometimes for the first time in many years.

2. Copyright Policy Centers.

When IUPUI established its Copyright Management Center five years ago, it was a unique effort. Creating a central resource for policy development and advice on the university's role in its intellectual property was a new concept. A few other large research institutions have since initiated similar efforts. These universities have established centralized resource centers to provide policy guidance, advocacy for the unique concerns of educational

[13] Discussions of intellectual property ownership are less likely to include courses which are broadcast in real time or videotaped for asynchronous viewing. Because of the extensive use of university-owned equipment and support staff, faculty and universities report a greater presumption that the university does own the material.

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institutions in intellectual property policy and interpretation, and copyright education. These centers reflect quite different institutional models and organizational structures. The IUPUI copyright center reports to the Academic Affairs office. At the University of Texas, the copyright resource center is located within the University Counsel's office. At North Carolina State, the office is a part of the library. The role of these centers in direct management of licenses, whether for electronic resources to be made available on a university-wide basis or for transactional licenses for preexisting content, varies in relation to the mission of the organization of which it is apart. For example, the centers at the University of Texas and North Carolina State, located within the office of the university counsel and the library respectively, are more involved on an operational level than the IUPUI center, which is a part of academic affairs.

Several additional institutions have reported receiving approval in early 1999 for a proposed office for copyright coordination. One such center is directly linked to the established distance learning program at a large state university. The advocates for these centers believe that the fact of the DMCA itself played a part in the approval process since many university administrators perceive the passage of the DMCA to be an important milestone. It represented specific legislative action on digital information issues and had specific provisions relating to educational institutions.

As indicated above, the increasing focus on today's campus on copyright issues is often driven by the role of the educational institution as a licensor, rather than as a licensee. Senior administrators and university counsels in particular characterize copyright issues today as encompassing a variety of obligations and business relationships and the management of the

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university's own resources in an increasingly global and complex market. As a result, the office of university counsel is being consulted more and more regularly on such issues.

Those needs are creating a need for complex contracts that reflect business partnerships that go beyond simple license agreements. For example, a major university planned to deliver live video of a specific class to several satellite sites and wanted to deliver the text digitally as well. The text for the course was not available in digital form, nor did the publisher have the resources, or the expertise, to convert it. In subsequent negotiations, the university and the publisher fashioned a mutually beneficial contract in which the university assumed responsibility for the conversion and was accorded the right to transmit the digital text as well.

3. Copyright Education.

The DMCA has, based on campus reports, motivated many universities to focus on their role in copyright education for faculty and staff and to increase their investment. In requiring institutions which seek to limit their liabilities as Internet service providers to provide educational materials that "accurately describe and promote compliance with the copyright law," the Act has led to a new level of scrutiny of those materials and programs.

In the academic year 1998 – 1999, about one third of the institutions contacted offered copyright education to their faculty in the form of workshops. The educational programs offered are delivered more frequently, provide more extensive information, and are more likely to be attended by faculty than in previous years. The instruction is voluntary for faculty. As one trainer remarked, "the new faculty come and the established faculty don't."

Historically, universities have rarely communicated with content owners as policies and

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practices were developed. A recent initiative may impact that pattern. In April 1999, several major trade associations representing educational institutions and one group of copyright owners cautiously began discussions about a different kind of educational effort. The intent is for both parties to collaborate on a set of common educational messages about copyright responsibilities within an educational setting. The goal is to reach a broad base of faculty and students with as common a message as possible, acknowledging differences clearly where they exist.

E. CHANGING ROLES OF EDUCATIONAL INSTITUTIONS IN INTELLECTUAL PROPERTY

The digital revolution has brought significant changes in the role of educational institutions in the creation, management, and dissemination of intellectual property. At most of the institutions contacted, with the exception of several of the community colleges, there is a policy or contract in place, or under active discussion, regarding the copyright ownership, royalty share arrangements, and future exploitation of digitally supported courses.

Though this Licensing Report does not extend to the institutional/faculty discussion over ownership of original content created by faculty, this issue will begin to affect licensing practices and needs at educational institutions within the foreseeable future. Administrators and university attorneys are already anticipating complex negotiations as faculty leave the institution at which they were employed during the development of a digital course for a different institution. Will the faculty member be entitled to take the course to her new institution? If the educational institution owns the course in question, will it agree to license the course to the second institution? Under what terms and conditions? For what time period? At what fee? How will these negotiations be affected if preexisting content has been licensed

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for inclusion in the course? If preexisting content has been included in the digital course under a fair use claim, how will licenses be negotiated for distribution outside the original institution?

These ownership discussions are not limited to higher education. They are beginning on a much more limited scale in K-12 educational systems as well. Teacher unions in some states, for example Maine, have included provisions about ownership of courses and curricula in their teacher contracts. In other instances, local school districts are beginning to take the necessary steps to assert a copyright claim in their curriculum.

IV. LICENSING POLICIES AND PRACTICES: CONTENT OWNERS

Content owners generally develop licensing policies and practices for both types of licenses, transactional and site, in reaction to a visible market need. The volume of requests for digital use of material in the academic market represents a small fraction of the total license requests for academic uses. Even among text publishers and producers of educational audiovisual materials who receive licensing requests for digital uses, and specifically for uses in digital distance education, the numbers are small. Moreover, the description of the uses, the numbers of users, the conditions under which the material will be used, the amount of material requested, and the type of technology to be used vary significantly even within that small absolute number of requests. As a result, no content owner in any media specifically tracked decisions on requests to digitize content for distance education activities. Respondents across all media reported that those requests are evaluated and processed on a relatively ad hoc basis.

The digital age has led to the development of a growing number of information and

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image products delivered in electronic form under license agreement. These site licenses are sometimes are negotiated directly with the content owner and sometimes with an information intermediary who delivers content on behalf of the owner or owner(s). The emphasis in these license negotiations is on defining, and anticipating, as clearly and comprehensively as possible, the range of institutional users who will require or desire access to the material and the uses to which that material may be put. One highly regarded expert on such licenses argues that some of the most productive areas for these license negotiations are in such areas as vendor performance; accommodations in technology; archiving; or securing the rights for incidental uses such as course pack permissions or limited document supply, which may preclude the necessity for other transactional licenses. Site licenses will not be appropriate in all areas, however. As a general rule, such licenses restrict users to on-campus students, creating a disparity of access between on-campus and remote students. Also, site licenses cover a range of uses over a range of time, and may not be an efficient mechanism for licensing one-time or very limited uses. The value of site licenses that incorporate rights for certain uses of material that usually require ad hoc transactional licenses is primarily in the savings of administrative costs to both the educational institution and the content owner.

The relative success of site licensing practices is in contrast to the problems of the permissions or transactional licensing process. Very often the costs to both the licensee and licensor outweigh the value of the information/use being negotiated. This is especially true for transactional licenses for digital uses, which represent the smallest fraction of licensing used in digital distance education. Resource constraints in staff and technology to support greater automation and improved transaction processing are typical among content owners.

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The explanation from more senior executives and industry observers is that the business model to date (i.e, the revenue return on investment) simply does not justify additional expenditures. In all types of media, particularly works with a high commercial value such as motion pictures, educational licensing requests are competing with more lucrative business to business transactions. Developments in technology driven rights management and technology aided licensing may alter the business model substantially, particularly for digital material. Those technologies and business models[14] are, however, too early in their development to predict their impact on the transactional licensing market.

A. LICENSING AND PROTECTION OF MARKETS

A primary concern of content owners in managing transactional licenses in particular is to establish policies and practices that protect its market for sales of its current and future products. Licensing can and does serve as a vehicle for exploitation of existing content in new ways. However content owners are conflicted when their primary market seeks permissions to use material in a way that may supplant the need for the content producer's own product or future products. The majority of content producers involved in the sale of text, audiovisual, and image materials to the academic market described either significant investment in creating new products in digital format or in converting existing products into digital form or both. The rapidly growing market in digital distance education is one prime target for these new products. The strategic emphasis and resource investment among content owners is on new products which may be licensed or sold in the future.

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[14] *See* Section V of this Report.

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The changing role of educational institutions in creating and managing intellectual property was described in the prior section. Roles, and approaches to content development, are changing among content producers as well. Several educational publishers highlighted new products, developed for delivery over the World Wide Web and suitable for use in digital distance education, which were developed in collaboration with educational institutions. Content producers of educational audiovisual works report that they are actively analyzing the market need represented by a growing number of requests to use content digitally. The response has been to investigate new products and services to meet the market demand reflected in those needs rather than to develop their permissions systems further.

In addition, all major educational publishers, as well as a number of key publishers of professional and business information, have developed and continue to experiment with new products specifically designed for both the academic and corporate digital distance education market. Delivery and maintenance of these digital products typically requires coordination among the publisher, the educational institution, and a software vendor or vendors. As one regional sales manager for a major educational publisher's distance learning products commented, the business relationship between content producers and educational institutions is evolving.

B. INTEGRATION OF LICENSING AND STRATEGIC PLANNING

Large content producers with significant investments in building products, new sales strategies, and appropriate support systems for the growing distance education market have not consistently considered the role of licensing or permissions as a component in their strategic planning. The same faculty member whom a publisher may be actively courting to adopt a

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web based curriculum, with extensive free materials available online, may have to go through a time consuming and tedious permissions process to use his or her favorite portion of a print text from that same publisher. Distributors of educational audiovisual materials increasingly find they need to fill an educational role between their producers and their customers, explaining the impact of the digital revolution on education to producers and the complex rights and licensing issues involved for producers to educators.

These discontinuities in the management of customers, which are often perceived negatively by customers and potential customers, are beginning to be identified and addressed within some large educational publishing organizations and among more innovative video producers. New strategies and organizational communication links are being established by the innovators to ensure responsiveness to customers. One large educational publisher has developed a sophisticated system for collecting data on customers requesting digital use of materials. That data is regularly forwarded to the sales and marketing departments, and includes information on the types of institutions, the types of materials, and the types of uses requested. Within this particular publishing organization, the presumption is that those seeking permissions of any kind are "our customers." This philosophy is supported structurally in that the rights and permissions department reports to the same senior manager responsible for customer service.

In another major educational publishing organization with a strong and rapidly growing division devoted to developing distance education materials, a different approach is being considered. Recognizing the disparity between that division's approach to rapid product development and flexible responses to customer sales and service and the routine experiences

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their customers have in seeking permissions, this organization is considering adding a licensing function within its own customer support unit.

C. RIGHTS MANAGEMENT

In order to grant any license, the content producer must have, and must know that it has, the rights in question. Relatively few content producers in any media have made the necessary investment over time to build complete, accurate, and detailed information on what they own and/or what rights they have to the material in question. The information that is available is not in an easily accessible format.

A few innovative content owners have ad hoc efforts underway to develop relational databases to support the acquisition and granting of rights. Others have initiated major software development efforts to structure and manage this data, but discontinued those efforts because of the significant expense entailed, the absence of a business model to justify the investment, or confidence that such an investment would provide significant strategic benefit. Collective licensing organizations in music and text serving as agents for several hundred thousand works have developed relational databases to support online interactive licensing, but these products are still in development.

In fact, the value of portions of content in digital form, packaged and repackaged in a variety of formats and products, is underscored in the digital marketplace. Content owners, particularly in text and music are discovering additional reasons to develop the necessary data systems for technology-based rights management which can support more automated licensing systems. Several current and anticipated commercial efforts in the area of rights management promise, at least at present, to create a competitive marketplace for developing such systems

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for digital products. In fact, rights management, development of common terms and definitions for rights data or metadata, and efforts to ensure interoperability across media are all widely understood to be essential for significant growth in the delivery of digital products. However, the prognosis for applying more sophisticated rights management systems to preexisting content is more doubtful, given the large volume of historical material the high cost of developing the necessary databases and populating those databases and the relatively low economic value of license revenues for older materials.

Publishers, indeed all content owners, report a greater level of care when granting rights to digitize material in any setting to ensure that the rights are there to grant. As noted above, creators (authors, illustrators, photographers, etc.) have become both more sophisticated about their electronic rights, and more aggressive about protecting or exploiting those rights. As a result, content producers report greater caution in granting requests for digital uses if the rights are not clear, as they are not for many contracts that predate the digital revolution. The caution encompasses not only legal concerns but also concerns about relationships with their authors. The potential to alienate creators in ways that could affect future business relations is perceived as a significant risk in granting any digital rights in which the original creator may have, or believe they have, interests. Sensitivities in the business relationship beyond the specific rights question were also reported from the music and motion picture industries who further reported that such issues may influence whether a request is granted, the time it takes to grant a request (e.g., the artist may need to be contacted) and the fee associated with the grant.

D. ONE STOP SHOPPING

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The term "one stop shopping" is used to describe a mechanism that allows a user to go to one centralized site to request permissions for all the works he would like to use. In concept, this would eliminate many of the problems cited by educators today, and is often mentioned as a remedy to the current inefficiencies in the licensing process. In practice, however, one-stop shopping is an idea with real-world limitations, at least under current business practices in the United States.

Although digital objects are interchangeable, licensing practices for different types of content are not. The licensing systems, particularly for transactional licenses or permissions, are quite distinct. Consolidation in the publishing, information, multimedia, and entertainment industries notwithstanding, there are literally thousands and thousands of individual content producers of all types. Yet each media type, text, audiovisual images, and music, has a unique industry organization; established practices, or lack thereof, for licensing; its own licensing intermediaries, or lack thereof; and only rudimentary cooperation at the operational level. Collective licensing organizations[15] ease, but do not solve, these issues by industry. They have virtually no impact on coordinating license activities across media on behalf of the educational user.

E. USER ACCESS AND INTERFACE

Faculty and staff actively involved in digital distance education are largely a self-selected group of individuals who understand and rely heavily on electronic communication. They use information resources on the Web constantly and acquire software, information, and other items in support of their educational mission over the Web. Most content producers also

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[15] Section V of this Report.

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now have World Wide Web sites, some quite sophisticated, that offer rich information resources that enhance products, boost sales, and generally allow online purchasing or ordering of some type.

However, information on how to obtain permissions for additional uses of those products, both analog and digital, is frequently unavailable and buried on the site, does not carry clear or useful guidelines or directions, and requires that the requestor rely on mail or fax to initiate the requests. Only a handful of text publishers have established an e-mail link to their permissions departments.

F. PRACTICES OF CONTENT OWNERS BY MEDIA TYPE

1. Text Materials.

(a) Digitizing preexisting text content to support distance education. For the purpose of the following analysis, this Report looks at a cross section of publishers, with an emphasis on educational publishers and those in scholarly or academic publishing. Given the disproportionate number of distance education programs in business and technology, publishers with significant programs in these fields were also contacted. Their descriptions of activity in this market were remarkably consistent.

Requests to digitize preexisting content for inclusion in a digitally delivered course or for use in an electronic reserve system still comprise less than 1-2% of all requests received for reproduction of materials for distribution to students.[16] One large educational publisher counted approximately 30 such requests in 1998 for their business, computing, and engineering

[16] Requests for digital courses in distance education are not tracked separately from requests for digital courses for students in residence.

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materials. Scholarly publishers and university presses report a "handful," "1 or 2." The CCC[17] introduced a centralized licensing service for requests to digitize preexisting content for use with academic courses in the spring of 1997. CCC's Electronic Course Content Service received a volume of requests in the academic year 1997 - 1998 that was less than one half of 1% of the total requests processed under their course pack program.

Staff who manage these licensing requests directly report a narrow understanding of the technology, the educational environment in a distance education program, and the practices and procedures used to administer distance education courses and programs. Because digital uses of any type are less than two to three years old and not well understood, there is no body of experience against which to evaluate individual requests. Since the number of requests is small, experience with various technologies, software, and learning environments in use in digital distance education is limited. Often more detail is required from the user. In sum, the permissions process is often iterative and time consuming. The licensing, or permissions, process overall remains primarily a manual, labor intensive effort. Relatively few content owners have automated their systems for accepting and responding to license requests.

As recently as three years ago, requests to digitize materials for any use, academic or corporate, were routinely denied by the majority of publishers. As of the current academic year, 1998-99, the majority of educational and scholarly publishers contacted do grant requests to digitize preexisting content as long as those requests meet the criteria specified below. Publishers targeting the academic market, whether with textbooks, scholarly monographs, or

[17] The Copyright Clearance Center is a collective licensing agency for print publishers. It serves as the Reproduction Rights Organization in the U.S. The role of CCC and the details of the Electronic Course Content Service will be examined further Section V of this Report.

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journal literature, report universally that it has become standard practice to grant such requests today. They also acknowledge that such granting is a significant change in practice that has taken place within the last twelve to fifteen months.

The process each publishing organization described for making the change in policy was similar. A specific request or set of requests raised the issue. In order to respond, the publishing organization began to learn a little more about the nature of the technology and the uses described. Next, the staff receiving the requests proceeded to brief various decision makers in the organization. It was then necessary to take a new draft policy through a complete organizational review. Once new policy was developed, a form agreement had to be adapted from existing permissions agreements. That process is repeated, publisher by publisher. One publisher who processes grants for such requests today acknowledged that the first such request required over six months for a response. Though this description is specific to text publishers, it is typical of the process by which new policies, criteria for grants, fee schedules, and form agreements are developed for other media as changes in educational practice and/or available technologies generate new types of requests.

Limited knowledge, uncertainty, even suspicion, about technology used in digital distance education and electronic reserve systems including security, controls on access, and downstream uses were the norm a year ago, according to publishers contacted. Today those attitudes are being replaced by a slowly growing consensus that such requests can be approved as long as certain key elements are incorporated into the license to protect the interests of the publisher. First, the amount of material requested must be limited. Second, access must be limited to students enrolled in the course, typically by student ID and/or password and/or IP

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address authentication. Copyright notices must appear on screen. Students must be advised (means not specified) as to limits on their use of the material. Material must be deleted or, access blocked, at the end of the course.

Publisher agreements are typically one page in length, specify the elements above, and are issued in the form of a simple letter agreement. Because the experience base is still very small and terms are not thoroughly understood, areas of confusion and potential misunderstanding persist. For example, though agreements generally prohibit students from making an "electronic copy," they are often silent on whether a student can make a personal, print copy. It is not always clear as to whether the prohibition on an "electronic copy" is intended to bar a personal copy on the student's hard drive. Agreements reviewed also failed to define time frames for storing the material consistently: how is the "end of a course" defined? Is there a specified grace period between the conclusion of the course and the date the material must be removed or blocked on the server? If material is blocked, not removed from the server, can it be made accessible for a student doing make-up work for the original course? Concerned educators raised all of these questions/issues during the course of the Copyright Office hearings. The early stage agreements in the market place today are currently silent on these practical points.

The majority of scholarly and educational publishers consistently report that they deny only two to three percent of the requests they receive to digitize preexisting content. Typically, requests are denied only when the publisher judges that too much material has been requested. Educational institutions contacted, however, reported denial rates ranging from none to as much as one third of all requests. In describing denial rates, users tend to aggregate

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specific refusals, failures to respond, as well as instances in which, as the potential licensee, they were unable to identify or to locate the actual copyright owner of the material. Moreover, many respondents are reporting primarily on small samples in which the impact of one content owners' decision to reject the request or to set a particular fee may be disproportionate.

(i) Fees. Educational and scholarly publishers generally report that they have set fees for a license to digitize a portion of a work for use in digitally delivered education or in electronic reserve systems that are roughly comparable to those charged for a course pack use, i.e., cents per page per student enrolled. Instances in which fees are substantially higher do occur when the content (i.e., the article, the individual case, the excerpt) can be purchased directly or as part of a complete digital product that is sold or licensed at an institution-wide fee.

Fees for digital uses are somewhat more likely to be structured as a flat fee, regardless of the size of the class or number of students who will have access. This practice reflects a presumption that, inevitably, more individuals will, or could, access the digital version. Content owners report a higher fee as a way of protecting the property, or at least the value of the property, in some way. The resulting fee per student may be judged unacceptable by the licensing institution.

No publisher reported differentiating between not for-profit and for-profit entities in setting fees, as long as the nature of the use was comparable and occurred in an accredited educational setting. In fact, it was unclear whether a majority of permissions professionals had a good understanding of the variety of for-profit organizations providing digital distance

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education and how they do, and do not, differ from established not for-profit educational institutions.

(ii) Differing responses by type of publisher. Educational publishers with established permissions departments generally respond within two to three weeks, or less, with generally consistent prices, terms, and conditions. Thus, over time, a faculty or staff member who frequently requests their material will be able to predict the response with reasonable accuracy. Other publishers with a clear stake in the academic market – university presses, scholarly publishers, professional and reference publishers – report similar response times.

Denials, long delays in response, or unpredictable pricing are more likely to occur with smaller publishing organizations – small, independent publishers, niche publishers, organizations of one time publications that lack a traditional publishing infrastructure. These organizations are often uninformed about digital distance education and the processes and technology that support it. The number and frequency of requests any individual publisher receives do not create an incentive for them to become more informed. It is simply less risky to reject a request or set a prohibitively high fee. Alternatively, a publisher may delay action instead. Large publishing organizations that have a relatively low stake in the academic market often delay as well. Anecdotes of such extended delays by newspaper or trade publishers are relatively common among educational institutions.

Of great concern to educational institutions are denials from established publishers who own titles of particular significance in a specific discipline. Professional and reference materials are the types most often cited in these discussions. Often these publishers already offer the content in question in electronic form, often on a subscription basis either directly

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from the publisher or through an intermediary. Currently, electronic content is most likely to be delivered as a package (whole journals, multiple journals, thousands of full text articles, etc.) licensed for access by large numbers of faculty and students with commensurate price tags. Publishers report that they deny requests for digitizing smaller components at a low fee because such permissions may jeopardize sales; users find the pricing or delivery model too inflexible to accommodate the specific needs of a specific distance education course. The result may be an impasse over material that the faculty member deems crucial to the course.

Overall, therefore the licensing experiences of individual educational institutions may vary depending on the disciplines in which they offer distance education, the levels of those courses and the resulting kinds of literature required, and the types of publishers whose products they request. Digital uses also tend to exacerbate different information needs among different disciplines. Disciplines requiring historical and archival material may have significant problems in locating copyright owners in order to secure permission. On the other hand, courses requiring public documents, current news coverage, and the like benefit from the ready availability of much of that content online at no charge.

(b) Licensing of electronic journals and databases. In general these licenses for electronic products are only in their first or second generation of negotiation. Terms are changing but the supporting definitions, and the procedures for managing information, are challenging to develop and often require a significant investment. Publishers, particularly those with greater experience in electronic publishing, report that their issue is not whether distance students should be included, but how they can be included on a secure basis at an acceptable cost.

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In general publishers have articulated a willingness to include enrolled distance students if:

- a methodology for controlling access can be worked out with the library
- the educational institution is willing to assume some level of responsibility for enforcing the terms of the license with those students, and
- the license fee reflects any increase in the number of enrolled students.

2. Audiovisual, images and music.

The World Wide Web, in particular, is a medium that invites the use of audio and visual materials. The most technically literate faculty now involved in creating digital distance education courses are already experimenting with original video and audio content. Based on the rate of growth in inquiries to video producers and educational broadcasters, the interest in digitizing preexisting content is growing though the absolute number of requests is currently vary small. Digital delivery of courses will drive demand for more visually interesting and diversified materials in order to retain student interest.

(a) Audiovisual materials. Video producers report a very low incidence of requests to use their material in distance learning environments - either via broadcasts to remote locations or via digitizing clips for inclusion in Web delivered courses. Responses such as "a handful," "a couple," and "occasionally" are common, though there is widespread agreement that the numbers are increasing at a significant rate. Among major video producers, only the Public Broadcasting System routinely incorporates into its license agreement authorization to transmit the video content within a building, single campus, or cluster of buildings on a closed network, "where those rights are available."

Other producers generally grant such requests if they have the necessary rights from

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the creators. Educational video distributors are generally willing to contact the producer on a customer's behalf. In fact, at least one major producer described itself as having an important role in educating producers about the changing needs of educational institutions as technology evolves. As with print publishers, use agreements tend to be simple, one page agreements. The small number of requests is seen as an insufficient basis for developing a more sophisticated document. Every video producer contacted indicated that use fees were also in development and currently calculated based on the specifics of the request. Larger organizations stressed that they strive to keep fees low so that their products remain affordable on a per student basis. One major producer described a relatively new practice of issuing licenses in perpetuity, or in continuity, meaning simply a license to use the video in the manner described for as long as needed for one initial license fee.

Educational video producers, facing a growing market in digital distance education, generally are still uncertain about when and how and how much of their current product line should be converted to digital form. One producer described an active program for digitizing their content; this organization had digitized about 10% of its archive and had set a goal of digitizing over 50% of that archive by the end of 1999. The marketing director in this particular firm described the current market as "in an awkward transition while we go from analog to digital. Three years from now everything we do will be in a digital format."

For audiovisual works in particular, individual faculty are encountering the complex copyright issues in this medium with little knowledge or experience. Educational video producers too appear to be focusing on meeting the needs of faculty with new products and services, rather than improved licensing systems. As a result, one video organization launched

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an active program to contact their academic customers and determine what kinds of content they needed in digital form and what kinds of uses they anticipated for that content. A second, an organization in educational television, described initiating contact with their teacher education/teacher resource center to develop resources and programs to assist educators achieve new kinds of programs. Another has mounted a searchable catalogue of available footage on the World Wide Web. In general, these organizations are convinced that the technology, expertise, and resources required to produce high quality materials will drive the market to different kinds of partnerships between educational institutions and content producers for the production of audiovisual materials for digital distance education.

Motion picture companies also report small volumes of requests by educational institutions to use "clips" in the classroom. One estimate of the volume of such requests, which extend to a variety of instructional uses in educational settings, was "two to three per week." Motion picture producers do acknowledge that locating the correct department and/or individual to handle a "permissions" request is not a simple process within their organizations. One studio, however, has a specific phone line with extensive recorded information on how to submit requests of all kinds, what information to provide, and what to expect in terms of response times.

Many of the issues that affect licensing and permissions for motion pictures are similar to those described for other media: does the studio have all the rights required to grant the request? If not who needs to be contacted for further rights? Even if no contractual rights per se are involved, does the clip or still involve a performer with whom good business relationships are exceptionally valuable? Does that individual prefer to approve all uses?

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Does the requestor need a physical copy of the clip? What time and costs will be required to produce that clip? Educators are often surprised when motion picture producers take the position that clips cannot be legally duplicated from "home use" videos and find the costs involved in securing the clip from the studio to be prohibitive.

Permission for these requests is generally granted if the rights are available, sometimes with no royalty fee. The decision to grant, and the decision whether to charge a fee and, if so, how much, depends on the product in question, the nature of the use, the age of the product, the fame of the segment and/or the artists involved. Generally, grants are provided when the request is to use less than three minutes of the film. Most requests are for still images or far less than three minutes of film.

The time frame for approving requests can be lengthy, in part because of the questions of rights and/or business sensitivity to the preferences of a valued performer. Furthermore, all licensing requests funnel through a single channel. Educational use requests must compete with more valuable, and often more clearly defined, business to business licenses which may be processed first.

Requests to convert film into digital form and/or to transmit digitally are generally denied. Motion picture producers expressed serious concerns about technological security. As a result of those concerns, virtually no digital uses of any kind are authorized. At this stage in the development of the technology, even commercial requests for digital rights are denied at this time.

(b) Images. Art educators, and visual resource specialists and librarians engaged in arts teaching and scholarship, have described in comments and testimony the

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unique problems they face in assembling the images needed for digital distance education courses in the visual arts. A typical course in the visual arts may require anywhere from 1,000 to 2,000 individual images. Moreover, many existing slide collections have been assembled over a period of time and are comprised of images acquired commercially, material developed and donated by faculty, and a variety of images from other sources now exceedingly difficult to identify. Identifying and locating copyright owners across such a spectrum, particularly for such a large number of images, is difficult, expensive, and not always successful. Thus seeking transactional licenses or permissions to incorporate preexisting content into digital art courses is not viewed as a practical option.

At least one commercial vendor has developed an "On-site Digitization Policy" and offers a standard license that authorizes educational institutions to scan slides (within certain specified technical standards) for teaching and research uses at a standard fee per image. Such licenses, however, are specifically limited to on-site/campus uses only.

Following a pattern seen in other media, content owners, producers, and distributors in the visual arts, rather than focusing on ways to improve transactional licensing systems for analog products, are creating alternative digital products to meet the growing need for digital arts collections. Several key commercial image vendors are releasing a number of digital collections under license agreements that may, for example, authorize the inclusion of the thumbnail images in a course syllabus. One vendor even offers instructions at its World Wide Web site on how to integrate these digital images into a digital course. Again, the license offered limits use to the campus intranet and does not authorize any transmission over the

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World Wide Web. The vendor expects to offer additional sets of a digital collection for multiple sites at a substantially reduced license fee in the near term.

In addition to the offerings of vendors who have served the educational market for some time, are newer, more diversified, image vendors such as Corbis Corporation (www.corbis.com). Though Corbis has not targeted educational institutions per se, it does receive a small number of inquiries weekly from academics who generally license images at the low individual rates. Licenses for those images do allow for web use, i.e., they could be used in digital distance education courses. Corbis does routinely rely on web crawlers to locate its watermarked images on the World Wide Web. Such scans generally do uncover unauthorized
(i.e., unlicensed images at academic sites). This practice of web crawling to detect unauthorized uses of watermarked images is becoming more common among a variety of stock photo organizations.

In the last two years, museums and art institutes have also undertaken two initiatives to create large repositories of their images which are being offered to educational institutions under institutional, or site, licenses. Both consortiums are designed to deal with the broad issues of the quantity, quality, and accessibility of digital art and photographic images for educational institutions. These initiatives are described in detail in Section V below.

The growing availability of large collections of high quality images are meeting many needs among art educators generally. Two limitations are evident, however. Such licenses generally do not currently accommodate the specific needs of distance education in that images are licensed only for use on the campus network and distribution on the World Wide Web is

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not authorized. Moreover, these image collections do not, and according to art educators may never, provide all the relevant images an instructor would need for a course, particularly those in more narrow and/or advanced areas of scholarship.

(c) Musical works and sound recordings. Licensing of musical works is, as a practical matter, one of the most complex, given the several, distinctive rights involved in any digital use and the fact that the licensing for each of those rights is handled by a different type of content owner or a different collective licensing organize. Public performance rights and "mechanical" rights of musical works, i.e., the right to use the music in online delivery, as well as tapes or CD's, are managed by collective organizations. Those licensing activities are discussed in Section V of this Report.

Requests to reproduce sound recordings in an analog or digital format or to perform them by means of a digital transmission, are handled directly by the individual recording companies. Those companies again report few requests for educational uses of any type and even fewer requests for the rights for digital uses in educational settings. When requests are received, they are handled on a case by case basis with fees set case by case as well. Factors that might affect the fee levels include the promotional value of the work and whether it was in or out of print. A letter agreement is developed for each request granted. Practice on requests for digital uses varies, with organizations reporting both that they decline all such requests and other organizations granting requests for digital excerpts of sound recordings, as long as the clip is limited to 30 seconds. There is a standard form agreement for such grants, which, among its other provisions, reminds the user that other rights are involved and additional licenses may be required.

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3. Software.

The software that enables the delivery of the electronic material is an enabling technology. This type of operating software is often licensed by the university along with the electronic content being delivered. In some instances, the content owner has developed proprietary platforms for delivering the content. In others, software for managing and delivering the content has been licensed from a third party vendor with the necessary rights for broad scale distribution. The use of particular pieces of software, as examples or illustration of a point, in digitally delivered courses is yet another area in which licenses are rarely requested or issued.

V. ORGANIZATIONAL AND COMMERCIAL INITIATIVES IN LICENSING

The first four sections of this document have attempted to summarize the kinds of licensing activities, the volume of those activities, and the policies and practices of the direct participants in the licensing process, educational institutions and content owners. This final section will examine the current, and potential role, of other types of organizations that impact the market for licensing in digital distance education. The organizations reviewed below include licensing collectives, commercial rights management organization, and finally the software and service providers who support, and in some instances, drive the digital distance education market. The predominantly not-for-profit licensing collectives serve as agents for defined constituencies of content owners and offer centralized or collective licensing systems to educational institutions for activities such as digital distance education. The section on commercial organizations developing new models for rights management in digital information reprises some of the organizations identified in the Technology section of the Report. The

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intent in this Appendix is to elaborate further on the business models and the likely applicability of these technologies to the educational environment.

A. LICENSING COLLECTIVES

1. Text.

The not-for-profit CCC has provided a centralized transactional licensing service for text materials for course pack permissions since 1991. CCC offers an online automated service and back end processing that manages both customer billing and royalty distribution. Royalty fees are based on individual pricing by copyright owners and the CCC adds a service charge per transaction. Drawing on its extensive experience in academic licensing and its established business relationships with both content owners (publishers and authors) and universities, CCC debuted a rights clearance service for electronic reserve systems in the spring of 1997.

Though re-named the Electronic Course Content Service (ECCS) in the spring of 1998, the majority of customers, and transactions, are still related to electronic reserve systems. Digital distance education courses are eligible for the service, however, and the expectation from CCC, publishers, and key university customers is that such requests will increase. Though the ECCS has managed fewer than 2000 transactions to date, response from publishers has been positive and customers clearly value the convenience of the collective model. Several referenced the convenience of the CCC in their testimony at the Copyright Office Hearings. In fact, the number of requests received by ECCS in 1998-1999 are running at a rate that would produce annual requests almost triple the number of request received the year before.

2. Music.

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Both performance and "mechanical" rights are managed for the music industry by established collectives. The established performance rights organizations, the American Society of Composers, Authors, and Publishers (ASCAP at www.ascap.com) and Broadcast Music, Inc. (BMI at www.bmi.com) have provided comprehensive, relatively low cost performance licenses to academic institutions for decades. Negotiated with two key organizations representing educational institutions, the National Association of College and University Business Officers (NACUBO) and the American Council on Education (ACE at www.acenet.org), these licenses cover virtually any kind of non-dramatic performance a faculty member or student might undertake.

Both organizations currently license Web sites, but the focus on these licensing programs is on commercial rather than educational organizations. They also seek out on a regular basis non-licensed sites, including academic sites, with music in digital form using a variety of techniques including web crawlers. The responsible individual is contacted and licensing is offered. The kinds of uses uncovered typically include activities such as college radio stations, for which a standard license fee is $250. Although standards and technology to protect music on the Web are only in the earliest stages of development, these performance licensing organizations believe they must move ahead with licenses now in keeping with their fiduciary obligations to their licensors. Though a license for digital uses is currently "under discussion," the terms are confidential, as is any estimate of when such a license might be available in the market place.

"Mechanical" rights, i.e., the licensing of music for use in records, tapes, CD's and online delivery are managed by The Harry Fox Agency, Inc., a wholly owned subsidiary of

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the National Music Publishers' Association. Harry Fox has invested in the development of an interactive, online licensing system which is scheduled to be launched within 1999. The potential licensee will be able to log on to the agency's database of over 600,000 compositions and request a license for a particular use. Though the range of uses that can be licensed in this fashion at launch may be limited, the agency's plan is to include digital uses relevant to distance education in the near term.

3. Images.

Two unique not for-profit organizations have also been established in the last two years with a mission to digitize and license significant museum collections for educational uses. The more established of the two is AMICO, the Art Museum Image Consortium (www.amico.org). AMICO, with twenty six member museums in its beta year of operation, has created a "library" of digitized works of art, described and indexed, which are made available for study in educational institutions. The database currently contains over 40,000 high resolution images. Access to the library is provided on a subscription basis, with fees based on the type of not-for-profit institution subscribing and the potential number of users. The subscription price comprises both the license fee and the access fee and covers, in one annual payment, searching, all allowed uses, and technical support.

The AMICO license incorporates specific language designed to ensure its content is available to all enrolled students regardless of their location. The license also requires the university subscriber to adopt and effectively disseminate policies and procedures governing the proper use of the electronic collection.

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The Museum Digital Library Collection, Inc. is expected to launch a collection of 20,000 high resolution images representing nineteenth century culture in the United States and Canada. An institutional license will be offered to the educational community at no charge initially, while data is gathered to help determine a reasonable and appropriate fee structure. The MDLC has also focused on standardizing and rationalizing the licensing process for commercial uses. By pairing commercial and educational licensing, MDLC hopes to develop a business model that can succeed in both environments.

B. COMMERCIAL DEVELOPMENTS IN RIGHTS MANAGEMENT

Licensing in a digital environment will require clear and immediate knowledge of whether rights are available for that licensing request and a structured method for accessing information on those rights. A persistent problem in the analog world, granular rights management has been a universal, cross media focus as content creators prepare for the delivery of digital products. From mid-1998 through early 1999, a series of initiatives in digital rights management have been announced. The number, scope, funding resources, and type of corporate backing in place all suggest that the market is moving substantially closer to solving the problem of copyright protection for digital materials. Whether these technologies and business models will flow backward, impacting the rights management problems and licensing issues for preexisting content is less certain.

One recent rights management initiative within the educational organization of a large content company will have a direct impact on its licensing for digital distance learning as well as other academic use licensing. International Thomson Publishing (www.thomsonrights.com) has announced a set of strategic initiatives for its educational companies that test a new

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business model for managing rights acquisition and granting. Recognizing the business opportunities in maintaining structured, accessible rights information on all its properties, ITP has been building across all its operating companies a rights management database that will support re-purposing (i.e., the reuse in different forms, products, and services) of all its content in a cost effective manner. By viewing rights acquisition and rights licensing as integrated activities, ITP's project incorporates the development of rights information for each component into the product development process, minimizing incremental costs.

Another initiative by a global media company focused on image material. The Scholastic Online Digital Archive ("SODA") at Scholastic Inc. brought online in June of 1998 is a multi-purpose project designed to identify, consolidate, digitize and archive the visual and textual resources acquired over time by all the units within the larger publishing organization. In addition, the material is being described and indexed to aid editorial staff and product developers in locating the articles and types of images they need. This latter task represents a major, and essential investment, for virtually all projects to convert image material into searchable digital files. To date, SODA has captured over 80,000 digitized files and images. SODA was initiated to support internal product development and achieve cost savings. This project, and others like it, provide the data, access, and resources which could be instrumental in facilitating licensing activities.

Beyond the activities internal to content producers, several commercial organizations have been launched in the last six to twelve months which purport to have a combination of technologies and business models that will improve rights management and support more cost effective and flexible licensing systems for digital content. These include Copyright Direct

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(www.copyrightdirect.com), a New Hampshire based subsidiary of an established academic book distributor; iCopyright (www.icopyright.com), based in Washington state and launched in September of 1998; and Replicator Inc., (www.replicator.com) of Buffalo, New York (formerly Rights Exchange), a licensee of the Intertrust Corporation (www.intertrust.com) which in late 1998, received an infusion of capital from the Microsoft Corporation to develop a range for the Intertrust technology.

The Copyright Direct system, currently in beta test with at least one major educational publisher, focuses on publisher controlled rights management and pricing, coupled with a complex set of use templates which would allow a variety of users, including those interested in digital distance education, to automate their permission requests from an icon imbedded in the digital material. The Copyright Direct beta currently supports legacy rights data for previously published content. This system gives publishers direct control and instant, secure, access to their own rights and pricing information.

The newest enterprise in rights management, iCopyright, offers technology that will allow copyright owners to embed a series of rule sets (terms and conditions and prices for specific uses) into digital objects. These rule sets could then be accessed readily by end users and a licensing transaction could be initiated by an individual consumer relying on an automated credit card for payment. This system, like the other three, permits fair use copies by virtue of inclusion of that option in the rule sets. Users affiliated with an academic institution could be authenticated through a master account system and individual uses could be billed to that institution. iCopyright has been endorsed by the newly created Software and Information Industry Association as a solution for managing digital copyrights.

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Replicator Inc. is a corporate licensee of the Intertrust Corporation whose technology was described in the Technology section of the Report. Both Replicator and iCopyright have launched their initial products/demos with information suitable for the corporate community. At this point, only Copyright Direct has announced an intent to serve the educational market.

VI. CONCLUSION

Licensing electronic resources has been described as an evolving art. The expanding market for digital information products in all media types and growing experience in defining the needs of users of all types as well as appropriate terms and conditions to address those needs will provide the incentives to support that evolution. The growing body of experience with licensing of electronic products points to four trends in that process that may be instructive about the general evolution of licensing practices for digital products. First, universities have provided few, if any, additional resources to manage this new licensing task. Typically libraries, and the office of university counsels, were required to reallocate existing staff and support resources to manage license negotiations, contract maintenance, and license renewals.

Second, and related to the first, library associations have undertaken a series of initiatives in training and education related to negotiations. Through the LIBLICENSE housed at Yale University and funded in part by the Council for Library Resources, librarians have access to a model license; checklists to guide their evaluation of individual licenses offered by content owners; and an active list serve through which questions, problems, and solutions with

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licensing generally, and with the licenses of specific publishers and/or vendors, can be shared.[18]

Third, the license documents themselves, and their terms and conditions, have been evolving as users become more adept and sophisticated at defining their needs and content owners have an expanded base of experience to evaluate risks and opportunities in this market. In general, the licenses for electronic products are only in their first or second generation. Terms are evolving as experience grows with both the terms themselves and the procedures and technology required for managing electronic information, and the security, access, archive, and other emerging issues.

Fourth, just as the licensing documents themselves are in evolution, the business models for delivering electronic information are also in evolution. Some of these appear to favor wider distribution of information resources. For example, consortium licensing, rare five years ago, is a growing phenomenon today. Through consortium licensing, electronic files are made available to all the libraries in a consortium at negotiated fees. Though the basis for fees varies, the emerging principle is that all the libraries in the consortium gain access to all the material at an expense level based related to the subscription revenues generated by the original subscriber members of the consortium. Since a number of digital distance education programs have also been organized around state and regional consortiums, consortium licensing models provide an experience base for developing licenses to support these regional digital distance education programs.

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[18] In the ten weeks of research for this report, the Liblicense list serve had virtually no activity on the topic of licensing issues specific to digital distance education.

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Whether conditions in the transactional licensing, or permissions market, will support significant evolution in these areas is less clear. Obstacles to that evolution include the sheer numbers of content owners across all media and the uneven and unpredictable pace at which large numbers of content owners are developing a thorough understanding of digital technology and what threats, and opportunities, it does and does not pose for their content. Although content owners generally have agreed to use of their materials in digital distance education programs as they become more knowledgeable about the use and the technology that supports it, there is no certainty that thousands of others, across all media, will reach the same policy conclusion.

It is also unclear whether content owners and educational institutions will opt, over the long run, to invest resources in developing transactional licensing systems for preexisting content. Other alternatives for developing accessible, high quality digital content to meet the needs of instructors in digital distance education and any other digitally delivered courses in at least some media may meet the pedagogical needs and offer better economic rationales. Given the differences in licensing practice, rights management, and technological protections, it is unlikely that meaningful "one stop shopping" for licensing will emerge in any reasonable time frame. In addition, for certain types of content, it may never be in the copyright owners' interest to license works when the market is small and licensing competes with their primary market.

Two other issues are likely to impact on the future of license development: the development of some level of agreement as to what constitutes fair use in a digital environment and improvement in the level of copyright knowledge among staff and instructors at

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educational institutions at all levels. Currently progress in defining the licensing/fair use boundary is "stuck." Educators, vested in preserving fair use in a digital environment, are slow to seek licenses that might inadvertently undermine their interests in fair use preservation. Content owners, who typically develop transactional licensing policies and practices in reaction to requests received, are slow to do so because the volume of such activity is low. Finally, both educational institutions and content owners alike would undoubtedly benefit from improving the level of copyright knowledge among instructors generally so that they become informed, not merely frustrated, participants when decisions about licensing must be made and licensing negotiations are involved.

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APPENDIX

The following individuals were interviewed in preparing the Licensing Report. Generally, the interviews were focused on experiences in developing, administering, or using licensing systems. Individuals described their personal experiences and did not necessarily represent the views or policies of their institution or organization.

EDUCATIONAL INSTITUTIONS, LIBRARIES AND RELATED ENTITIES OR ASSOCIATIONS

Sheila Trice Bell
National Association of College and University Attorneys

Jon Binks
Kennedy School of Government, Harvard University

Wendy Bohlke
Office of the Attorney General, State of Washington

Clint Brooks
NorthWest Arkansas Community College

Johanna Bowen
Cabrillo Community College

Dwayne Butler
Indiana University/Purdue University at Indianapolis

Mary Case
Association of Research Libraries

Cindy Clennon
Committee on Institutional Cooperation

Lenore Coral
Cornell University

Kevin Cranman
Georgia Institute of Technology

Kenneth Crews
Indiana University
Purdue University Indianapolis

Christine Dalziel
Instructional Telecommunications Council

Larry Daniels
National Association of College Stores

Trisha Davis

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The Ohio State University

Joseph Dial
Seattle Community Colleges

Fritz Dolak
Ball State University

Larry Dooley
University of Texas

Rhonda Edwards
Northwestern Michigan College

Laura Gasaway
University of North Carolina

Virginia M. Hall
Johns Hopkins University

Georgia Harper
University of Texas

Leslie Ellen Harris
Leslie Harris & Associates

Frank Heller
Global Village Learning

Karen Hersey
Massachusetts Institute of Technology

Kim Kelly
University of Maryland University College

Peg Koonz
Trident Community College

Candice Lee
Central Michigan State University

Jonathan Lindsay
Harvard University Law School

Steve McDonald
The Ohio State University

Maggie McVay
Franklin University

Dr. Janet Nepkie
State University College, Onconta, New York

Kurt Slobodzian

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University of Phoenix

Lynne M. Schrum
University of Georgia

John Sneed
Portland (Oregon) Community College

Sue Spinks
University of Texas

Jamie Switzer
Colorado State University

Elizabeth Tebeaux
University of Texas

John Vaughn
American Association of Universities

Marjorie Whiteleather
Cornell University

Rolena Woo
University of Phoenix

CONTENT OWNERS, DISTRIBUTORS, AND RELATED ASSOCIATIONS

Paul Aiken
The Author's Guild

Mark Ansorge
Warner Music Group

Melinda Ball
Cambridge Educational

Diane Bilello
Films for the Humanities

Dan Carlinsky
American Society of Journalists and Authors

Maren Christiansen
Universal Studios

Paul DeGiusti
Software and Information Industry Association

Paul Dzus
MIT Press

Mark Eisenberg

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Sony Music Entertainment

John Elliott
Academic Press

Janet Fisher
MIT Press

Julie Froelich
Pearson EducatioNetwork

Matt Gerson
Universal Studios

Peter Givler
American Association of University Presses

Joanne Grason
The Annenberg/CPB

David Green
Corbis Corporation

Daphne Gronich
20th Century Fox

Carline Haga
International Thomson Publishing

Diane Korta
Addison Wesley Longman

Bill McKenna
Harvard Business School Press

Steve Marks
Recording Industry Association of America

Craig Mertens
Houghton Mifflin

Patricia Nelson
Addison Wesley Longman

Ron Reed
United Learning

Bernard Rous
ACM

Burt Schachter
Scholastic , Inc.

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Alan Shearer
Washington Post, Inc.

Bernard Sorkin
Time-Warner

Vladimir Stefanovic
WGBH, Boston

Morey Sudac
Commonwealth Films

Sanford Thatcher
Penn State University Press

Lois Wasoff
Houghton Mifflin

LICENSING AND OTHER ORGANIZATIONS

Chris Amenitis
American Society of Composers, Authors, and Publishers

Edward Colleran
Copyright Clearance Center

John Dobrin
RealEducation

John Flores
US Distance Learning Association

Kelly Frey
Yankee Rights Management

Patrick Gaynes
Motion Picture Licensing Corporation

Daniel Gervais
Copyright Clearance Center, Inc.

Betty Gorsegner
National Media Market and AIME

Laurie Hughes
American Society of Composers, Authors, and Publishers

Kelly Kroll
Replicator, Inc.

Judith Saffer
Broadcast Music, Inc.

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Geoffrey Samuels
Museum Digital Library Collection, Inc.

Joan McGivern
American Society of Composers, Authors, and Publishers

Rajan Samtani
REAL Systems Software, Inc.

Charles Sanders
Harry Fox Agency

Jerry Schwartz
icopyright, inc.

Jennifer Trant
AMICO

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APPENDIX F

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FAIR USE GUIDELINES FOR EDUCATIONAL MULTIMEDIA*

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3. Permitted Educational Uses for Multimedia Projects Under These Guidelines
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Appendix B: Organizations Participating in Development of These Guidelines

1. INTRODUCTION

1.1 Preamble

Fair use is a legal principle that provides certain limitations on the exclusive rights** of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for non-commercial educational uses. These guidelines apply only to fair use in the context of copyright and to no other rights.

There is no simple test to determine what is fair use. Section 107 of the Copyright Act*** sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a "fair use" ; (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the endorsers' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use. The participants also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain -- such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions -- or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

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*These Guidelines shall not be read to supersede other preexisting education fair use guidelines that deal with the Copyright Act
of 1976.

**See Section 106 of the Copyright Act.

***The Copyright Act of 1976, as amended, is codified at 17 U.S.C. Sec.101 et seq.

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The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

1.2 Background

These guidelines clarify the application of fair use of copyrighted works as teaching methods are adapted to new learning environments. Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities. Educators and students want guidance about the application of fair use principles when creating their own multimedia projects to meet specific instructional objectives.

1.3 Applicability of These Guidelines

(Certain basic terms used throughout these guidelines are identified in bold and defined in this section.)

These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprofit educational institutions. **Educational multimedia projects** created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. **Educational institutions** are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of these guidelines, **educators** include faculty, teachers, instructors and others who engage in scholarly, research and instructional activities for educational institutions. The copyrighted works used under these guidelines are **lawfully acquired** if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for **educational purposes in** systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under Section 3. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines such as those for off-air taping may be relevant.

2. PREPARATION OF EDUCATIONAL MULTIMEDIA PROJECTS USING PORTIONS OF COPYRIGHTED WORKS

These uses are subject to the Portion Limitations listed in Section 4. They should include proper attribution and citation as defined in Sections 6.2.

2.1 By Students:

Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

2.2 By Educators for Curriculum-Based Instruction:

Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

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3. PERMITTED USES OF EDUCATIONAL MULTIMEDIA PROJECTS CREATED UNDER THESE GUIDELINES
Uses of educational multimedia projects created under these guidelines are subject to the Time, Portion, Copying and Distribution Limitations listed in Section 4.

3.1 Student Use:
Students may perform and display their own educational multimedia projects created under Section 2 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews.

3.2 Educator Use for Curriculum-Based Instruction:
Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:

3.2.1 for face-to-face instruction,

3.2.2 assigned to students for directed self-study,

3.2.3 for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or, educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the educational multimedia project.

3.3 Educator Use for Peer Conferences:
Educators may perform or display their own educational multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.

3.4 Educator Use for Professional Portfolio
Educators may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses such as tenure review or job interviews.

4, LIMITATIONS - TIME, PORTION, COPYING AND DISTRIBUTION
The preparation of educational multimedia projects incorporating copyrighted works under Section 2, and the use of such projects under Section 3, are subject to the limitations noted below.

4.1 Time Limitations
Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in Section 3.1.

4.2 Portion Limitations
Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. In the aggregate means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the

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reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under Sections 3.1 and 4.3 should comply with the portion limitations in this section.

4.2.1 Motion **Media**
Up to 10% or **3** minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines.

4.2.2 **Text Material**
Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

4.2.3 Music, Lyrics, and Music Video
Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Section 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

4.2.4 Illustrations **and Photographs**
The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2.

4.2.5 Numerical Data Sets
Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. A field entry is defmed as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defmed as the intersection where a row and a column meet on a spreadsheet.

4.3 **Copying and Distribution Limitations**
Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted by Section 3, there may be no more that two use copies only one of which may be placed on reserve as described in Section 3.2.3.

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3.3 and 3.4 for educators and in Section 3.1 for students.

5. EXAMPLES OF WHEN PERMISSION IS REQUIRED

5.1 Using Multimedia Projects for Non-Educational or Commercial Purposes
Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

5.2 Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines

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Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed in Section 4.3.

5.3 Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines
Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in Section 3.2.3, without obtaining permissions for all copyrighted works incorporated in the program.

6. IMPORTANT REMINDERS

6.1 Caution in Downloading Material from the Internet
Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

6.2 Attribution and Acknowledgement
Educators and students are reminded to credit the sources and display the copyright notice and copyright ownership information if this is shown in the original source, for all works incorporated as part of educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses described in Section 3.2.3. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered "incorporated" if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

6.3 Notice of Use Restrictions
Educators and students are advised that they must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.

6.4 Future Uses Beyond Fair Use
Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

6.5 Integrity of Copyrighted Works: Alterations
Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

6.6 Reproduction or Decompilation of Copyrighted Computer Programs
Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

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6.7 Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations

APPENDIX A: (Endorsements and letters of support received as of July 31,1997)

1. ORGANIZATIONS AND INSTITUTIONS ENDORSING THESE GUIDELINES

Agency for Instructional Technology (AIT)
American Association of Community Colleges (AACC)
American Bar Association - Section on Intellectual Property
American Intellectual Property Law Association
American Society of Journalists and Authors (ASJA)
American Society of Media Photographers, Inc. (ASMP)
American Society of Composers, Authors and Publishers (ASCAP)
Association for Educational Communications and Technology (AECT)
Association for Information Media and Equipment (AIME)
Association of American Publishers (AAP)*
Association of American Colleges and Universities (MC&U)
Association of American University Presses, Inc. (AAUP)
Author Guild/Authors Registry
Broadcast Music, Inc. (BMI)
Consortium of College and University Media Centers (CCUMC)
Creative Incentive Coalition (CIC)**
DeKalb College/Clarkson, GA
Educational Technology Officers Association/State University of N.Y. (EdTOA/SUNY)***
Educational Testing Service (ETS)
Information Industry Association (HA)****
Instructional Telecommunications Council (ITC)
Iowa Association for Communication Technology (IACT)
Maricopa Community Colleges/Phoenix
Motion Picture Association of America (MPAA)
Music Publishers' Association of the United States (MPA)
National Association of Regional Media-Centers (NARMC)
National Association of Schools of Art and Design (NASAD)
National Association of Schools of Dance (NASD)
National Association of Schools of Music (NASM)
National Association of Schools of Theatre (NAST)
National Council of Teachers of Mathematics (NCTM)
Northern Illinois Learning Resources Consortium (NILRC)
Picture Agency Council of America
Recording Industry Association of America (RIAA)
Software Publishers Association (SPA)*****
Special Libraries Association (SLA)
Tennessee Board of Regents Media Consortium

*The Association of American Publishers (AAP) membership includes over 300 publishers

**The Creative Incentive Coalition membership includes the following organizations:
-Association of American Publishers
-Association of Independent Television Stations
-Association of Test Publishers
-Business Software Alliance
-General Instrument Corporation
-Information Industry Association
-Information -Technology Industry Council
-Interactive Digital Software Association
-Magazine Publishers of America
-The McGraw-Hill Companies
-Microsoft Corporation
-Motion Picture Association of America, Inc.
-National Cable Television Association
-National Music Publisher's Association
-Newspaper Association of America
-Recording Industry Association of America
-Seagram/MCA, Inc.
-Software Publishers Association
-Time Warner, Inc.

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-Turner Broadcasting System, Inc.
-West Publishing Company
-Viacom, Inc.

***EdTOA/SUNY represents all 64 State University of New York campuses.

****The Information Industry Association (IIA) membership includes 550 companies involved in the creation, distribution and use of information products, services and technologies

*****The Software Publishers Association (SPA) membership includes 1200 software publishers

2. **INDIVIDUAL COMPANIES** ENDORSING THESE GUIDELINES:
Houghton Mifflin
John Wiley & Sons, Inc.
McGraw-Hill
Time Warner, Inc.

3. U.S. GOVERNMENTAL AGENCIES SUPPORTING THESE GUIDELINES:
U.S. National Endowment for the Arts (NEA)
U.S. Copyright Office
U.S. Patent and Trademark Office

APPENDIX B: ORGANIZATIONS PARTICIPATING IN GUIDELINE DEVELOPMENT: **Being a participant does not necessarily mean the organization has or will endorse these guidelines.**
Agency for Instructional Technology (AIT)
American Association of Community Colleges (AACC)
American Association for Higher Education (AAHE)
American Library Association (ALA)
American Society of Journalists and Authors (ASJA)
American Society of Media Photographers (ASMP)
Artists Rights Foundation
Association of American Colleges and Universities (AAC&U)
Association of American Publishers (AAP)
-Harvard University Press
-Houghton Mifflin
-McGraw-Hill
-Simon and Schuster
-Worth Publishers
Association of College and Research Libraries (ACRL)
Association for Educational Communications and Technology (AECT)
Association for Information Media and Equipment (AIME)
Association of Research Libraries (ARL)
Authors Guild, Inc.
Broadcast Music, Inc. (BMI)
Consortium of College and University Media Centers (CCUMC)
Copyright Clearance Center (CCC)
Creative Incentive Coalition (CIC)
Directors Guild of America (DGA)
European American Music Distributors Corp.
Educational institutions participating in guideline discussion
-American University
Carnegie Mellon University
-City College/City University of New York
-Kent State University
-Maricopa Community Colleges/Phoenix
-Pennsylvania State University

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-University of Delaware
Information Industry Association (IIA)
Instructional Telecommunications Council (ITC)
International Association of Scientific, Technical and Medical Publishers
Motion Picture Association of America (MPAA)
Music Publishers Association (MPA)
National Association of State Universities and Land-Grant Colleges (NASULGC)
National Council of Teachers of Mathematics (NCTM)
National Educational Association (NEA)
National Music Publishers Association (NMPA)
National School Boards Association (NSBA)
National Science Teachers Association (NSTA)
National Video Resources (NVR)
Public Broadcasting System (PBS)
Recording Industry Association of America (RIAA)
Software Publishers Association (SPA)
Time Warner, Inc.
U.S. Copyright Office
U.S. National Endowment for the Arts (NEA)
Viacom, Inc.

Prepared by the Educational Multimedia Fair Use Guidelines Development Committee, July 17, 1996

MULTIMEDIA GUIDELINES WEB SITE (The final Fair Use Guidelines for Educational Multimedia Document with a current list of endorser can be found on the following web sites.)

http://www.indiana.edu/~ccumc/

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APPENDIX G

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PROPOSAL FOR EDUCATIONAL FAIR USE GUIDELINES FOR DISTANCE LEARNING[1]

Performance & Display of Audiovisual and Other Copyrighted Works

1.1

Fair use is a legal principle that provides certain limitations on the exclusive rights[2] of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educational institutions, educators, scholars and students who wish to use copyrighted works for distance education under fair use rather than by seeking authorization from the copyright owners for non-commercial purposes. The guidelines apply to fair use only in the context of copyright.

There is no simple test to determine what is fair use. Section 107 of the Copyright sets forth the four fair use factors which should be considered in each instance, based on the particular facts of a given case, to determine whether a use is a "fair use": (1) the purpose and character of the use, including whether use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is a fair use, these guidelines represent the endorsers' consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use. The endorsers also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain -- such as U.S. government works or works on which the copyright has expired for which there are no copyright restrictions – or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to revise these guidelines. Nothing in these guidelines should be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of distance education. The guidelines do not cover non-educational or commercial digitization or use at any time, even by nonprofit educational institutions. The guidelines are not

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[1] **The Guidelines shall not be read to supersede other preexisting educational use guidelines that deal with the 1976 Copyright Act.**

[2] **See Section 106 of the Copyright Act.**

[3] **The Copyright Act of 1976, as amended, is codified at 17 U.S.C. *et seq.***

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intended to cover fair use of copyrighted works in other educational contexts such as educational multimedia projects,[4] electronic reserves or digital images which may be addressed in other fair use guidelines.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

1.2 BACKGROUND

Section 106 of the Copyright Act defines the right to perform or display a work as an exclusive right of the copyright holder. The Act also provides, however, some exceptions under which it is not necessary to ask the copyright holder's permission to perform or display a work. One is the fair use exception contained in Section 107, which is summarized in the preamble. Another set of exceptions, contained in Sections 1 10(1)-(2), permit instructors and students to perform or display copyrighted materials without permission from the copyright holder under certain carefully defined conditions.

Section 110(1) permits teachers and students in a nonprofit educational institution to perform or display any copyrighted work in the course of face-to-face teaching activities. In face-to-face instruction, such teachers and students may act out a play, read aloud a poem, display a cartoon or a slide, or play a videotape so long as the copy of the videotape was lawfully obtained. In essence, Section 110(l) permits performance and display of any kind of copyrighted work, and even a complete work, as a part of face-to-face instruction.

Section 110(2) permits performance of a nondramatic literary or musical work or display of any work as a part of a transmission in some distance learning contexts, under the specific conditions set out in that Section. Section 110(2) does not permit performance of dramatic or audiovisual works as a part of a transmission The statute further requires that the transmission be directly related and of material assistance to the teaching content of the transmission and that the transmission be received in a classroom or other place normally devoted to instruction or by persons whose disabilities or special circumstances prevent attendance at a classroom or other place normally devoted to instruction.

The purpose of these guidelines is to provide guidance for the performance and display of copyrighted works in some of the distance learning environments that have developed since the enactment of Section 110 and that may not meet the specific conditions of Section 1 10(2). They permit instructors who meet the conditions of these guidelines to perform and display copyrighted works as if they were engaged in face-to-face instruction. They may, for example, perform an audiovisual work, even a complete one, in a one-time transmission to students so long as they meet the other conditions of these guidelines. They may not, however, allow such transmissions to result in copies for students unless they have permission to do so, any more than face-to-face instructors may make copies of audiovisual works for their students without permission.

The developers of these guidelines agree that these guidelines reflect the principles of fair use in combination with the specific provisions of Sections 110(l)-(2). In most respects, they expand the provisions of Section 110(2). In some cases, students and teachers in distance learning situations may

[4] In general, multimedia projects are stand-alone, interactive programs incorporating both original andpre-existing copyrighted works in various media formats, while visual image archives are databases. of individual visual images from which images intended for educational uses may be selected for display.

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want to perform and display only small portions of copyrighted works that may be permissible under the fair use doctrine even in the absence of these guidelines. Given the specific limitations set out in Section 110(2), however, the participants believe that there may be a higher burden of demonstrating that fair use under Section 107 permits performance or display of more than a small portion of a copyrighted work under circumstances not specifically authorized by Section 110(2).

13 DISTANCE LEARNING IN GENERAL

Broadly viewed, distance learning is an educational process that occurs when instruction is delivered to students physically remote from the location or campus of program origin, the main campus, or the primary resources that support instruction. In this process, the requirements for a course or program may be completed through remote communications with instructional and support staff including either one-way or two-way written, electronic or other media forms.

Distance education involves teaching through the use of telecommunications technologies to transmit and receive various materials through voice, video and data. These avenues of teaching often constitute instruction on a closed system limited to students who are pursuing educational opportunities as part of a systematic teaching activity or curriculum and are officially enrolled in the course. Examples of such analog and digital technologies include telecourses, audio and video teleconferences, closed broadcast and cable television systems, microwave and ITFS, compressed and full-motion video, fiber optic networks, audiographic systems, interactive videodisk, satellite-based and computer networks.

2. APPLICABILITY AND ELIGIBILITY

2.1 APPLICABILITY OF THE GUIDELINES

These guidelines apply to the performance of lawfully acquired copyrighted works not included under Section 110(2) (such as a dramatic work or an audiovisual work) as well as to uses not covered for works that are included in Section 110(2). The covered uses are (1) live interactive distance learning classes (i.e., a teacher in a live class with all or some of the students at remote locations) and (2) faculty instruction recorded without students present for later transmission. They apply to delivery via satellite, closed circuit television or a secure computer network. They do not permit circumventing anti-copying mechanisms embedded in copyrighted works.

These guidelines do not cover asynchronous delivery of distance learning over a computer network, even one that is secure and capable of limiting access to students enrolled in the course through PIN or other identification system. Although the participants believe fair use of copyrighted works applies in some aspects of such instruction, they did not develop fair use guidelines to cover these situations because the area is so unsettled. The technology is rapidly developing, educational institutions are just beginning to experiment with these courses, and publishers and other creators of copyrighted works are in the early stages of developing materials and experimenting with marketing strategies for computer network delivery of distance learning materials. Thus, consideration of whether fair use guidelines are needed for asynchronous computer network delivery of distance learning courses perhaps should be revisited in three to five years.

In some cases, the guidelines do not apply to specific materials because no permission is required, either because the material to be performed or displayed is in the public domain, or because the instructor or the institution controls all relevant copyrights. In other cases, the guidelines do not apply because the

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copyrighted material is already subject to a specific agreement. For example, if the material was obtained pursuant to a license, the terms of the license apply. If the institution has received permission to use copyrighted material specifically for distance learning, the terms of that permission apply.

2.2 **ELIGIBILITY**

2.2.1 ELIGIBLE EDUCATIONAL INSTITUTION: These guidelines apply to nonprofit educational institutions at all levels of instruction whose primary focus is supporting research and instructional activities of educators and students but only to their nonprofit activities. They also apply to government agencies that offer instruction to their employees.

2.2.2 ELIGIBLE STUDENTS: Only students officially enrolled for the course at an eligible institution may view the transmission that contains works covered by these guidelines. This may include students enrolled in the course who are currently matriculated at another eligible institution. These guidelines are also applicable to government agency employees who take the course or program offered by the agency as a part of their official duties.

3. WORKS PERFORMED FOR INSTRUCTION

3.1 RELATION TO INSTRUCTION: Works performed must be integrated into the course, must be part of systematic instruction and must be directly related and of material assistance to the teaching content of the transmission. The performance may not be for entertainment purposes.

4. TRANSMISSION AND RECEPTION

4.1 TRANSMISSION (DELIVERY): Transmission must be over a secure system with technological limitations on access to the class or program such as a PIN number, password, smartcard or other means of identification of the eligible student.

4.2 RECEPTION: Reception must be in a classroom or other similar place normally devoted to instruction or any other site where the reception can be controlled by the eligible institution. In all such locations, the institution must utilize technological means to prevent copying of the portion of the class session that contains performance of the copyrighted work.

5. LIMITATIONS:

5.1 **ONE TIME USE**: Performance of an entire copyrighted work or a large portion thereof may be transmitted only once for a distance learning course. For subsequent performances, displays or access, permission must be obtained.

5.2 REPRODUCTION AND ACCESS TO COPIES

5.2.1 RECEIVING INSTITUITION: The institution receiving the transmission may record or copy classes that include the performance of an entire copyrighted work, or a large portion thereof, and retain the recording or copy for up to 15 consecutive class days (i.e., days in which the institution is open for regular instruction) for viewing by students enrolled in the course. 5 Access to the recording or copy for such viewing must be in a controlled environment such as a classroom, library or media center, and the institution must prevent copying by students of the portion of the class session that contains the performance of the copyrighted work. If the institution wants to retain the recording or copy of the

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transmission for a longer period of time, it must obtain permission from the rightsholder or delete the portion which contains the performance of the copyrighted work.

5.2.2 TRANSMITTING INSTITUTION: The transmitting institution may, under the same terms, reproduce and provide access to copies of the transmission containing the performance of a copyrighted work; in addition, it can exercise reproduction rights provided in Section 112(b).

6. MULTIMEDIA

6.1 COMMERCIALLY PRODUCED MULTIMEDIA: If the copyrighted multimedia work was obtained pursuant to a license agreement, the terms of the license apply. If, however, there is no license, the performance of the copyrighted elements of the multimedia works may be transmitted in accordance with the provisions of these guidelines.

7. EXAMPLES OF WHEN PERMISSION IS REQUIRED:

7.1 Commercial uses: Any commercial use including the situation where a nonprofit educational institution is conducting courses for a for-profit corporation for a fee such as supervisory training courses or safety training for the corporation's employees.

7.2. Dissemination of recorded courses: An institution offering instruction via distance learning under these guidelines wants to further disseminate the recordings of the course or portions that contain performance of a copyrighted work.

7.3 Uncontrolled access to classes: An institution (agency) wants to offer a course or program that contains the performance of copyrighted works to non-employees.

7.4 Use beyond the 15-day limitation: An institution wishes to retain the recorded or copied class session that contains the performance of a copyrighted work not 'covered in Section110(2). (It also could delete the portion of the recorded class session that contains the performance).

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APPENDIX H

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ORRIN G. HATCH, UTAH, CHAIRMAN

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ROBERT G. TORRICELLI, NEW JERSEY

MANUS COONEY, *Chief Counsel and Staff Director*
BRUCE A. COHEN, *Minority Chief Counsel*

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 24, 1998

Ms. Marybeth Peters
Register of Copyrights
Copyright Office
Library of Congress
Washington, D.C. 20540

Dear Ms. Peters:

We would like to commend the Copyright Office for its valuable contribution to our effort to resolve the outstanding issues regarding the Digital Millennium Copyright Act (DMCA). Ms. Shira Perlmutter and Mr. Jesse Feder were extremely helpful in clarifying issues and in suggesting legislative language.

We would like the Copyright Office to continue its assistance in resolving the remaining issues. In an effort to continue serious negotiations on the issue of distance education among the interested parties, we request the Copyright Office to facilitate discussions with a view toward making recommendations, including specific legislative language if possible, that may be incorporated into the DMCA at its final mark-up, which is scheduled for Thursday, April 30, 1998. We would appreciate having your recommendations by close of business, Tuesday, April 28th.

We would like you to make every effort to resolve this issue within this time frame, building on the specific points that have already been identified in previous negotiations. We look forward to receiving your recommendations.

Thank you very much for assisting us in this matter.

ORRIN HATCH
United States Senator

PATRICK LEAHY
United States Senator

JOHN ASHCROFT
United States Senator

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APPENDIX I

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The Register of Copyrights
of the
United States of America

Library of Congress
Department 17
Washington, D.C. 20540

(202) 707-8350

April 29, 1998

Dear Senators Hatch, Leahy and Ashcroft:

Thank you for giving the Copyright Office the opportunity to facilitate discussions with interested parties in an effort to formulate recommendations on an exemption for digital distance education to be included in the Digital Millennium Copyright Act (DMCA). I attach copies of our recommendations in statutory language, and explain their rationale below.

My staff and I met with a representative group of interested parties, and all participants negotiated intensively in meetings lasting over a two-day period. Significant progress was made in coming closer to agreement on both concepts and terms. It became apparent, however, that digital distance education is an evolving field, and the range of activities contemplated is diverse and potentially far-reaching in impact and scope. Many of the issues raised are complex and interrelated, and require greater consideration than was possible by our deadline at the close of business on April 28. These issues include: the categories of works to be included under any distance education exemption; the parties who should be entitled to the benefits of any distance education exemption; the extent of appropriate limitations on the portions of works that may be used under any distance education exemption; the degree to which technological measures exist and how they should be used to prevent unauthorized, non-exempted uses of copyrighted works; and the extent to which the availability of licenses should be considered in assessing eligibility for any distance education exemption.

Nevertheless, we were able to identify certain respects in which the copyright law can be updated at this time to accommodate new technologies for accomplishing existing distance education activities. We are pleased to recommend statutory changes to the current exemption for instructional broadcasting, section 110(2) of the Copyright Act, to reflect changes in broadcast technology. Our recommended changes would update section 110(2) to accommodate digital instructional broadcasts, permitting the same range of distance education activities that take place under the current provision to be carried out by means of digital broadcasting technologies such as High Definition Television (HDTV). We consider this an important step in updating the existing exemption to make clear that it extends into the digital age.

As to the broader question of interactive digital distance education, substantial work remains to be done. Broadening the current exemption to embrace a range of new activities raises complex issues that require further information and input from a wider range of interested parties than was possible in this short time frame. A number of interested parties were not present at the negotiations, as some were only identified during the course of discussions, and others may have yet to be identified. The development of an exemption addressing the delivery of works by transmission through interactive digital networks raises issues that merit the input of all potential stakeholders.

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We therefore recommend that the broader issues involved in interactive digital distance education be subject to further study in consultation with the affected parties. The Office would make specific recommendations to the Congress within a reasonable time frame from enactment of the DMCA, to be determined upon consultation with the Committee on the Judiciary.

Although we recognize that the issues surrounding distance education are complex and will take time to explore, the Copyright Office is committed to working toward their timely resolution. As a service unit of the Library of Congress, we are well aware of the concerns of nonprofit libraries and archives, as well as of nonprofit educational institutions, and will work to find a beneficial result that reconciles these concerns with the concerns of copyright owners.

We look forward to working with the Committee to see this process through to its completion, and to presenting the Congress with further recommendations.

Sincerely,

Marybeth Peters

Marybeth Peters
Register of Copyrights

Enclosures

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
131 Senate Russell Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Ashcroft
United States Senate
316 Hart Senate Office Building
Washington, D.C. 20510

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The Register of Copyrights
of the
United States of America

Library of Congress
Department 17
Washington, D.C. 20540

(202) 707-8350

May 25, 1999

Dear Mr. Speaker:

I am pleased to present the Copyright Office's Report on Copyright and Digital Distance Education, prepared pursuant to section 403 of the Digital Millennium Copyright Act of 1998 ("DMCA").

The DMCA directs the Register of Copyrights to 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 needs of users of copyrighted works." The recommendations are to include any legislation the Register considers appropriate to achieve this objective.

Over the past six months, the Copyright Office has conducted an intensive study of the copyright issues involved in digital distance education. Through public hearings and comments, as well as consultations with experts in various fields, we have gathered a wide range of information and views. This Report summarizes much of that information, and the appendices and supplemental volumes reproduce the comments, reply comments and hearing transcripts in their entirety, as well as certain reference materials.

This Report gives an overview of the nature of distance education today; describes current licensing practices in digital distance education, including problems and future trends; describes the status of the technologies available or in development relating to the delivery of distance education courses and the protection of their content; and discusses prior initiatives to address the copyright issues through the negotiation of guidelines or the enactment of legislation. It also provides an analysis of the application of current copyright law to digital distance education and an assessment of whether the law should be changed, and if so, how. We conclude by recommending several amendments to sections 110(2) and 112 of the Copyright Act, as well as the clarification of aspects of the law in legislative history, and further discussion and review of certain specific issues.

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