

May 15, 1997

Peter Fowler
Copyright Attorney
Office of Legislative and International Affairs
Patent and Trademark Office
Arlington, VA 22202

BY FAX: 703/ 305-8885

Dear Peter,

I am writing to clarify and confirm information we exchanged by telephone. AAM's endorsement of the CONFU Proposal for Educational Fair Use Guidelines for Digital Images is necessarily contingent on two commitments:

1. The U.S. Copyright Office and the Department of Commerce's agreement to a trial study period of at least one year for the guidelines.
2. Agreement that neither the U.S. Copyright Office nor the Department of Commerce will seek to include the guidelines in any legislation or legislative history for at least one year while the trial study is ongoing.

I hope that you will agree that this is a reasonable, fair, and appropriate approach. If you have any objections on behalf of the Department of Commerce, please let me know as soon as possible.

Thanks for all of your hard work on these challenging issues, Peter.

Sincerely,



Patricia Williams
Vice President, Policy and Programs



AMERICAN ASSOCIATION OF MUSEUMS

**Position Statement on the Conference on Fair Use
Proposal for Educational Fair Use Guidelines for Digital Images**

May 19, 1997

The American Association of Museums (AAM) strongly supports fair use and its continued relevance in the digital environment. As simultaneous users and owners of copyrighted images, museums are actively and regularly engaged in policies and practices involving fair use. In April 1996, AAM, along with the Association of Art Museum Directors, agreed to co-chair the Conference on Fair Use (CONFU) subgroup on Educational Fair Use Guidelines for Digital Images. From April to October 1996, dozens of organizations participated in over 100 hours of negotiations and attempted to reach a compromise proposal for educational fair use guidelines for digital images.

AAM sought comment on the resulting proposed guidelines from its membership, Standing Professional Committees, Board of Directors, and the museum community. A number of museums commented on their need for clear and balanced guidance on fair use of digital images and encouraged the Board's endorsement of the guidelines. Others, questioning whether guidelines might be premature or burdensome, recommended against endorsement. **On April 25, 1997, the AAM Board of Directors voted to endorse the Proposal for Educational Fair Use Guidelines for Digital Images in order to begin a one-year trial study of the guidelines.**

During this trial study, AAM and other organizations will examine the balance and practicality of the guidelines through use of the guidelines among their memberships. With the AAM Board's endorsement, museums can begin to put the guidelines into practice immediately. At the close of the study period, AAM will review comments and may recommend revisiting the guidelines in some areas if appropriate. We look forward to hearing from all types, sizes, and disciplines of museums to gauge the success of the guidelines. Both the Patent and Trademark Office and the U.S. Copyright Office have assured AAM that they will not seek to include the guidelines in any legislation or legislative history during the trial study.

Since museums are both rightsholders and educational institutions, AAM strived to balance the guidelines so that they maintain copyright controls while providing affirmative fair use defenses for innovative educational uses. As with any negotiation, the guidelines represent a number of compromise agreements, some of which were acceptable to the entire group and others that were controversial. In areas where the guidelines are silent, the participants agreed upon that silence: in every case, the Copyright Act's four-factor fair use test is recognized as the ultimate arbiter of fair use.

AAM is encouraged by the Patent and Trademark Office and the U.S. Copyright Office's consistent and direct support for fair use throughout the CONFU process. As recently as May 9, 1997, Commissioner of Patents and Trademarks Bruce Lehman reaffirmed his commitment to fair use. We appreciate the work of the U.S. Copyright Office, the Patent and Trademark Office, and the many organizations who provided comment during the CONFU process. CONFU has provided a healthy first step to opening communication between many parties with differing perspectives on fair use in the new digital environment. AAM will continue to seek ways to represent museums' significant interests in fair use and other copyright issues and to keep an open dialogue on these issues.

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