

May 9, 1997

Mr. Peter Fowler
Attorney-Advisor
Office of Legislative and International Affairs
U.S. Patent and Trademark Office
Box 4
Washington, DC 20231

 American
Association
of
State
Colleges
and
Universities

One Dupont Circle
Suite 700
Washington, DC
20036-1192
202/293-7070
fax 202/296-5819

Dear Mr. Fowler:

On behalf of the American Association of State Colleges and Universities and the National Association of State Universities and Land-Grant Colleges, we write to comment on guidelines developed through the Conference on Fair Use (CONFU). Also, we ask that you incorporate these comments in the final conference report.

After careful consideration and discussion among a wide range of our campus constituents who would be responsible for implementing and operating under the guidelines, we are unable to endorse the three sets of guidelines under consideration – guidelines governing distance learning, digital images, and educational multimedia. We withhold endorsement with some reluctance; we recognize the extraordinary amount of time and hard work well-intentioned representatives of the copyright community have devoted to developing these guidelines.

Since our institutions are creators, producers and users of intellectual property, our overriding aim is to maintain a balanced approach to the concept of fair use in the digital environment. Although the guidelines contain a number of useful elements, we cannot endorse them for the following reasons:

First, each of the guidelines contains provisions that identify formulaic prescriptions and restrict educational institutions from using educational materials to promote learning anytime and anyplace. Our institutions need guidance generally applicable to a broad range of information storage and delivery methods, rather than explicit constraints geared to a specific application. Technologies are changing so rapidly that detailed instructions tailored to one kind of technology will become outdated very quickly.

Second, we believe that promoting "best practice" models rather than explicit guidelines is a better way to deal with specific technologies, different kinds of higher education institutions, and rapidly changing modes of information storage and delivery. Colleges and universities have a responsibility to ensure that intellectual property is used appropriately and that access is given to those enrolled for educational purposes. Because we are

 National
Association
of
State
Universities
and
Land-Grant
Colleges

One Dupont Circle
Suite 710
Washington, DC
20036-1191
202/778-0818
fax 202/296-0450

creators and producers of intellectual property, we are concerned that copyrighted information is fairly protected as well. Many of our institutions are developing innovative agreements with the content industry for using materials for educational purposes in the electronic environment. Also, they are already carefully developing acceptable use policies and educating their users about these issues.

Third, we are concerned by the prospect that the guidelines will be taken beyond the CONFU process and codified into law. While the guidelines note there may be acceptable uses that exceed the specified limitations, we are concerned these restrictions will become the maximum acceptable use. Many of the participants who drafted these voluntary guidelines understood they would not to be taken beyond the CONFU process.

It should be noted that our students, faculty and staff purchase a huge amount of commercially produced educational materials each year. Educational institutions will continue to be large customers of the commercial sector regardless of whether the material is print-based or in digital form.

Finally, we would like to thank all the participants in this important process. We hope continued collaboration among different sectors will bring forward a set of commonly understood agreements that would appropriately translate fair use into the digital environment.

Sincerely,

James B. Appleberry
James Appleberry
President
AASCU

C. Peter Magrath
C. Peter Magrath
President
NASULGC

CPM/lve
Cc: Graham Spanier, Pennsylvania State University

ASCU
American
Association
of
State
Colleges
and
Universities

One Dupont Circle
Suite 700
Washington, DC
20036-1192
202/293-7070
fax 202/296-5819

 National
Association
of
State
Universities
and
Land-Grant
Colleges

One Dupont Circle
Suite 710
Washington, DC
20036-1191
202/778-0818
fax 202/296-0450