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Washington Office

ALA American Library Association

May 7, 1997

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

Dear Mr. Fowler:

The American Library Association appreciates your work as facilitator for the Conference on Fair Use (CONFU) process and the effort clearly entailed in producing your Interim Report to Commissioner Lehman, circulated to CONFU participants under cover of a letter from the Commissioner inviting "consideration, endorsement or comment by organizations interested in educational fair use."

ALA has found very useful and productive its participation in the CONFU process. As ALA noted in a letter to you on November 18, 1996:

The CONFU discussions have been helpful and productive in bringing together a large and diverse group of interested parties for regular meetings over a period of two years. Participants have developed a much better understanding of each other and of the needs of the various sectors. It has been helpful for the library and education communities to learn more about proprietor interests and concerns relating to the digital environment, and for proprietor representatives to understand better what educators and librarians and students and library users want to do with the newer technologies, how they use them and why, and what the problems or uncertainties are.

ALA has shared proposed guidelines widely during the CONFU process, and has also widely distributed your recent Interim Report to the Commissioner, containing the draft proposals for educational fair use guidelines in the areas of digital images, distance learning, and educational multimedia. In response to the Commissioner's February invitation to comment on these documents, I am enclosing the "American Library Association Position on Fair Use Guidelines in a Digital Information Environment," issued by ALA on January 3, 1997 on the basis of earlier unanimous action by the ALA Executive Board.

Specifically, as noted in the enclosed statement: "In a time of rapid technological and policy evolution, the American Library Association has concluded that it is premature to formalize guidelines for the fair use of copyrighted materials in a digital information environment." Our January statement also includes the rationale for this conclusion.

In addition, as all parties recognize, CONFU has been an informal process from the beginning, and possesses no governmentally conferred authority of any kind. For that reason, ALA wishes to underscore two points that its representatives have previously raised in writing and in open CONFU sessions:

1. The CONFU process has fostered increased understanding among interested parties. It has facilitated the development of draft guideline proposals considered by the participants, and which have only as much standing as the individual organizations represented in the CONFU process choose individually to give them. ALA reiterates its concern that we do not believe the CONFU itself can take positions on individual guidelines. That is a prerogative retained by individual organizations and entities. Therefore, we respectfully object to the statement in Commissioner Lehman's February 7 cover letter that "CONFU will consider adopting these proposed guidelines at its final meeting on May 19, 1997." Further, we disagree with the premise of the recommendation in the Interim Report "that CONFU may consider which guidelines have received wide spread endorsement in determining whether to adopt such guidelines as CONFU Fair Use Guidelines." ALA urges that the Interim Report be modified to more accurately reflect the nature of the CONFU process.

2. ALA also recommends that it should be clear on the face of any final report regarding CONFU that the document is a description of the CONFU process written by the PTO facilitator, and not a report developed collaboratively by the CONFU participants. Doing so would avoid misunderstandings by uninitiated readers who could easily mistake the document for the collectively accepted output of a formal deliberative body.

Should you or the Commissioner have any questions regarding these matters, please do not hesitate to contact the ALA Washington Office. Please note that, for your convenience, I am sending copies of this letter and statement to the individuals listed at the end of each of the three sets of draft proposals in the Interim Report.

Thank you again for your efforts throughout this long and complex process.

Sincerely,



Mary R. Somerville
President
American Library Association

Enclosure

cc: Cameron Kitchin, American Association of Museums
Lolly Gasaway, Univ. Of North Carolina Law Library
Lisa Livingston, CUNY

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ALA American Library Association

January 3, 1997

For further information, contact:
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AMERICAN LIBRARY ASSOCIATION POSITION ON FAIR USE GUIDELINES IN A DIGITAL INFORMATION ENVIRONMENT

In a time of rapid technological and policy evolution, the American Library Association has concluded that it is premature to formalize guidelines for the fair use of copyrighted materials in a digital information environment.

Fair use is an important element in maintaining the balance that current law embodies and that ALA has always sought in copyright policy between the legitimate needs of copyright proprietors and users of copyrighted materials in the interests of the development and spread of knowledge. Fair use is the long-standing doctrine, codified in the 1976 Copyright Act, that allows the use of copyrighted materials without infringement under certain circumstances, especially for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

Fair use guidelines, such as earlier sets of guidelines for interlibrary loan and for use of copyrighted materials in the classroom, have proven helpful to practitioners. ALA has participated in good faith in recent attempts to develop fair use guidelines in various areas through the CCUMC (Consortium of College and University Media Centers) and CONFU (Conference on Fair Use) processes.

Considerable time, energy, and resources have been expended by ALA and other organizations in pursuit of agreement through these efforts over the past few years. These opportunities for representatives of library, educational, and proprietor communities to come together have facilitated better understanding among interested parties.

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