

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

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 Technologies are changing so rapidly that detailed instructions tailored to one kind of technology will become outdated very quickly.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

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 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*  
*J.B. Appleberry*  
 James Appleberry  
 President  
 AASCU

*C. Peter Magrath*  
 C. Peter Magrath  
 President  
 NASULGC

CPM/lve  
 Cc: Graham Spanier, Pennsylvania State University



Washington State University

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June 21, 1996

Dr. Lisa Livingston, Chairperson  
Government Regulation &  
Public Policy Committee  
Consortium of College and University  
Media Centers  
City College/City University of New York  
138th Street at Convent Avenue  
New York, N. Y. 10031

Dear Dr. Livingston:

On June 5, 1996, the Executive Committee of the Commission on Information Technologies (CIT) of the National Association of State Universities and Land-Grant Colleges discussed the latest version of the "Fair Use Guidelines for Educational Multimedia" (May 30, 1996 version) prepared by the Consortium of College and University Media Centers. The Executive Committee is comprised of university presidents; three division chairs representing distance education, libraries and information infrastructure; and NASULGC staff and legal counsel. Tom Ballard of The University of Tennessee, Chair of the Board on Distance Education, and Glenn Wilde of Utah State University, a member, have participated in the CCUMC discussions since February 1996. They presented and discussed the CCUMC Fair Use Guidelines and overall consensus building process with the Executive Committee.

The CIT commends CCUMC for taking leadership to develop fair use guidelines for multimedia. In addition, our Commission acknowledges that the CCUMC efforts have spanned 18 months and have engaged discussion from a number of public and private sector organizations. Such guidance for faculty and development staff is needed as institutions begin to utilize more instructional technologies for multimedia instruction. The Executive Committee also recognizes that NASULGC/CIT participation in this process began just a few months ago and that much of the substantive agreement found in the CCUMC Guidelines was reached between the publishers/copyright organizations and educators prior to NASULGC's participation.

With those factors in mind, the task before the Executive Committee was to review and assess the CCUMC Guidelines and the implications, if adopted, on NASULGC

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institutions. After lengthy discussion, the Executive Committee concluded the following:

1. NASULGC legal counsel has reported that the May 14, 1996, legislation on copyrights before the House and Senate committees has been modified to provide stronger support for fair use of educational materials for public and higher education. Counsel's recommendation is that primary effort should be made to seek passage of this legislation through this Congress or the next one.
2. The Executive Committee has concerns about the portion limitations under Section 4 of the CCUMC Guidelines. Many faculty at NASULGC institutions who are developing - multimedia teaching materials have expressed concern that the CCUMC guidelines restrict development of in-depth multimedia applications under the portion limitations and that such arbitrary limitations actually restrict instructional creativity in the development and/or use of legally-acquired media. The Executive Committee also perceives that strictly-articulated portion limitations may establish untenable precedents which, in fact, may restrict or preclude legal principles of fair use of media for technology-based instruction and/or distance teaching provided under current copyright legislation.
3. The Executive Committee is concerned that CCUMC Guidelines have policy impacts on colleges and universities which must be reviewed, evaluated and approved within the framework of institutional policy. The CCUMC Guidelines must be assessed in terms of intellectual property policies at colleges and universities. The Executive Committee believes that university presidents and governing boards would welcome CCUMC input and guidance, as well as other organizations and associations, to inform this national policy deliberation.

Therefore, given the above concerns, the Executive Committee of the NASULGC Commission on Information Technologies declines to endorse the CCUMC Guidelines with the current limitations on fair use of media and materials. Furthermore, the committee believes that it is in the broad interest of public and higher education to support the current legislation before Congress and to define fair use guidelines based on those legislative principles. The leadership of NASULGC's Commission on Information Technologies is committed to continuing to participate and to provide

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information to Presidents to engage national discussion and debate on issues of intellectual property and copyright which will affect not only what our colleges and universities teach but how we will be able to teach.

Although the NASULGC Commission on Information Technologies does not endorse the current CCUMC Guidelines, your process and the draft document have provided the impetus for university participation at the presidential level in the national policy debate over issues of intellectual property, copyright and fair use of materials in education. The Commission believes that such presidential leadership will assure continued access to informational and learning resources for future generations of students.

Sincerely yours



Samuel Smith Chair,  
CIT Executive Committee and  
President, Washington State University

- cc: Dr. C. Peter Magrath, President, National Association of State Universities and Land Grant Colleges  
Dr. Graham Spanier, Chair-elect, NASULGC Commission on Information Technologies, and President, The Pennsylvania State University  
Mr. Thomas B. Ballard, Chair, Board on Distance Education, and Associate Vice President for Public Service, The University of Tennessee  
Dr. Glenn R. Wilde, Member of Board on Distance Education, and Dean, Learning Resources Program, Utah State University  
Mr. Kenneth D. Salomon, Dow, Lohnes and Albertson