

January 13, 1997

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman:

Last fall, the CCUMC and others submitted to the Judiciary Committee, copyright fair use guidelines purporting that they represented the consensus of all education. The CCUMC Multi-Media Fair Use guidelines are not acceptable in their current form. The copyright problems at the elementary and secondary level have not been resolved by this 6-page legal document and they do not make sense for elementary and secondary school children for the following reasons.

- The guidelines set up a series of proportional limitations:
 - 10% or 3 minutes, whichever is less, of a motion media
 - 10% or 1000 words, whichever is less, of test material
 - 10% or 30 seconds, whichever is less, of music
 - 10% or 2,500, whichever is less, fields of a database

These restrictions should not apply to elementary and secondary school children.

The so-called exemption for elementary school children is not an exemption, it merely acknowledges that some children in grades kindergarten through six may not be able to adhere to the limitations. This is obvious - many in early elementary grades are not even able to comprehend what 10% means. Furthermore, if a parent kept a child's project to show to family members and friends, the limited *acknowledgment* for elementary school children no longer applies.

The guidelines are too complicated for children. The basic goal at the high school level is for children to complete projects and not to have them count words, seconds or determine unusual terms such as *what is a database*. Furthermore, the proposed criteria set forth a have/have not mentality for students, schools and parents, pitting the more affluent against the less well off. A child from a wealthy home or school district is better able to stay within the guidelines because of the media choices that child is privy to, whereas a student with fewer means to engage in technology and media manipulation has fewer choices in which to participate in a multi-media project.

- The two year limitation on student projects is also not realistic. Teachers need to be able to show current classes what previous classes were able to accomplish. It appears that teachers cannot use a student's project except in the classroom in which it was created. In elementary and secondary schools, we use the cross-curriculum approach to education which means a teacher may want to display a project in a related class. The guidelines seem to refer to the education process in higher education where each course operates as a separate entity.
- The guidelines appear to make teachers and administrators legally responsible for the activities of students. No other copyright guidelines hold teachers and administrators responsible for the actions of students. Administrators and teachers are not normally liable for student's actions. Students, legally, are not in the same category as employees.

In addition, these guidelines raise problems which were not inherent in any of the guidelines that have been developed over the years. In the past, education groups that objected to guidelines were told not to be concerned because the guidelines were the minimal extent of fair use and fair use existed beyond the guidelines. These multi-media guidelines are not minimal -- they are not safe harbors for educators. Rather, the guidelines may be a consensus of where fair use exists. The preamble specifically states

the more one exceeds these guidelines, the greater the risk that fair use does not apply.

Our concerns could have been addressed without any impact on the existing or potential market of copyright owners. None of our comments apply to the use of commercial multi-media projects. Indeed, we support the prohibition that would place the same restrictions on children who produce commercial products as would apply to adults. Furthermore, multi-media projects developed by elementary and secondary students will not be a substitute for the purchase of commercial class materials. At our level, the projects are more basic in nature and exhibits akin to science fair projects that we have all seen.

Children need to be able to experiment with the new technology without a copyright lawyer standing over them. These guidelines are flawed. They are a good start but we need to go back and make them workable for teachers and students.

Sincerely,


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