



**BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS**

**IN THE MATTER OF
EXEMPTION TO THE PROHIBITION OF CIRCUMVENTION OF
COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL
TECHNOLOGIES**

Docket No. RM 2008-8

**COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE AND
THE MUSIC LIBRARY ASSOCIATION ON PROPOSED EXEMPTIONS**

In the first round of this proceeding, eight sets of comments representing the views of hundreds of thousands of librarians and educators supported the renewal and modest broadening of the existing exemption for film clip compilations. The Library Copyright Alliance and the Music Library Association jointly submitted comments requesting that the exemption be broadened in two related ways. First, it should apply to audiovisual works included in any college or university library, not just the library of the media studies department. Second, the exemption should apply to classroom uses by instructors in all subjects, not just media studies or film professors. The other commenters urged similar expansion of the film clip compilation exemption. Here we provide additional evidence in support of this expansion.

Absence of Alternatives

In the previous rulemaking, opponents of the film clip compilation exemption argued that it was not necessary because many films were still available in VHS format. Supporters of the exemption responded that many film titles were not available in VHS.

In the final rule issued on November 27, 2006, the Register did not address the availability of VHS tapes. Instead, she based her decision on the superior quality of the DVD format.

While the Register was correct in 2006 that the analog alternatives to DVD did not meet the pedagogical needs of instructors, the evidence now is overwhelming concerning the unavailability of copyrighted material in VHS format. A December 22, 2008 article in the *Los Angeles Times* entitled “VHS Era is Winding Down” reported on the last large U.S. distributor of VHS tapes, Distribution Video Audio Inc., abandoning the format. It shipped its last truckload of VHS tapes to retailers in October, 2008. Its president, Ryan Kugler, stated “[a]nything left in warehouse we’ll just give away or throw away.” According to the article, the last major Hollywood film released on VHS was *A History of Violence* in 2006. Since then, major retailers such as Best Buy and Wal-Mart discontinued sales of VHS tapes in favor of DVDs and Blu-ray discs, which consumers preferred and which required less shelf-space. Distribution Video Audio purchased VHS inventory from large retailers, distributors, and studios, then sold the tapes to discount chains and small retailers. But new recorded VHS tapes are not being produced, so once these retailers sell their inventory, only used cassettes will be available, if at all.

Additionally, the Motion Picture Association of America 2007 Annual Report indicates statistically insignificant sales of VHS films for end-users in 2007, down from 196 million units in 2003. During the same period, the sales of DVDs for end-users increased from 768 million units to 1.08 trillion units. Sales of VHS films to rental

outlets between 2003 and 2007 dropped from 47.5 million units to .3 million units. In sum, the market for films in VHS format has disappeared.

Additional Examples of Possible Uses

In our December 2, 2008 comments, we provided a long list of examples of the kinds of classroom uses of film clips that university faculty would make if the Library of Congress expanded the existing exemption to apply to classroom uses by instructors in all disciplines of films found in any library on a campus. Here are additional examples we have received from librarians and instructors across the country.

Examples from Patrick Newell, Librarian, California State University, Fresno

A professor of cultural geography at a California university wants to use clips addressing ethnicity and race. For example, in a World Geography course, the professor would use clips from documentaries such as *City of God* so that the students can get a visual impression of what the places discussed in class actually look like, such as the favelas of Brazil. Most students have never seen anything like this in their travels. It is important for them to see how sprawling, creative, and impoverished these settlements are, and mere description cannot do it justice. In this example, the opening scene from the film, which was about five minutes in length, is sufficient.

In ethnic geography courses, the professor wants to use clips from films such as *Rabbit-Proof Fence* to give students some insight into racial attitudes in specific times and places that they simply could not experience otherwise (in this case, in Australia in the 1930s). The characters say things in a way that conveys the social climate of the period, plus the visual imagery of the children literally being torn from the arms of their mothers is extremely powerful. Two clips, totaling ten minutes, can demonstrate to

students how virulent racism can be in places besides the U.S. The professor wants to use parts of *Bury My Heart at Wounded Knee* to similar effect.

The professor also would like to use scenes from *Gangs of New York* to illustrate attitudes in the U.S. towards Irish immigrants during the age of migration.

In a Geography of Tourism class, the professor would use clips to show how people and places are depicted in popular art. In a lecture on the economic impact of the film *Sideways* on the wine country around Santa Barbara, film clips can provide context for the students. The clips would not be about the plot, but about the setting and characters and what they reveal about geography.

In a course for freshman about the region in which the university is located, the professor emphasizes myths and stereotypes about the location and asks the students to compare/contrast these to their lived experiences here. A series of clips would demonstrate how widespread and entrenched this particular image of the community is. The professor could also talk with the students about what the directors got "right" and "wrong" in terms of the setting -- for example, the visual and spoken references to specific places can sometimes be accurate, sometimes not.

Also in that course, the professor teaches the students about how the place has been used as a filming location for many movies, TV shows, and commercials. Clips could be used to generate a discussion about how the place is used to represent other locations (e.g., Scotland, Texas) and what products a place's image is used to sell.

A professor of education would like to use clips from the following films:

- *Dangerous Minds*
- *Teachers*

- *Kindergarten Cop*
- *Dead Poet's Society*
- *Cheaters*
- *South Park*
- *Harry Potter*
- *High School High*

The clips would provide a vicarious form of applying teaching, the next best thing to being there. When students watch entertainment videos, they are more engaged and highly likely to remember what they have seen in later discussion group use (as compared to educational video).

A professor of communications, in a class that deals with communication and aging, wants to use clips from movies like *Away from Her*, *On Golden Pond*, and *The Savages* to illustrate difficulties that arise from discovering a spouse has Alzheimer's, has a grave fear of death, or deciding with a sibling to institutionalize a sick parent. Editing together scenes from episodes of TV shows such as *House* and *Scrubs* would make points about difficulties that may present themselves to older persons during medical encounters (e.g., stereotyping older persons as asexual - or revolting if they /are/ sexual).

In a class that focuses on family communication, the professor would like to show clips from programs such as *Frasier* to spark discussion of sibling rivalry, or the *Gilmore Girls* to trigger debate about appropriate boundaries between parents and children. The professor could also show scenes from documentaries aired on the Discovery channel that show specific researchers in action (e.g., John Gottman's love lab is a great example of how a research program on marital interaction is brought to life through media).

In a public speaking class, the professor would use a clip from the *Runaway Jury* to show how Gene Hackman presents statistical information in a powerful way. In order to be able to quickly show the clips (when he has multiple clips to show on a topic), the professor needs to compile the clips on a DVD rather than to try to set up a DVD player to the proper place for each individual film; taking time away from instruction to work a DVD player by cueing films to the correct location really interrupts discussion and instruction (particularly in classes that last only 50 minutes). The clips range from about 30 seconds to six minutes of a film or TV show. Using video clips during class time helps to convey ideas and concepts quickly and helps to provide the basis for in-class discussion. These discussions compliment the assigned readings and bring the subject to life for my students in a way that far exceeds what a textbook or classroom readings alone can.

Example from Derek Vaillant, Professor of Communications Studies, University of Michigan

To illustrate modern advertising's blend of "magical" appeals and social scientific marketing, students could watch a clip from the 1988 Hollywood hit, *Big*, in which Tom Hanks plays a twelve-year-old boy miraculously transformed into a man's body. The man-boy "teaches" the quantitatively obsessed marketing department of a New York toy company about the redemptive power of play (and consumerism). From this lesson, students would gain a concrete grasp of the tension in advertising and mass marketing between scientific managerialism and appeals to the carnivalesque. A contemporary film clip provides a concrete and accessible illustration of a complicated theoretical idea. It also serves as an *aide de memoire* for subsequent discussion of the cultural history of the media and consumerism.

Examples from Mark Winokur, Associate Professor of English, University of Colorado at Boulder

In a session on the history of film special effects in a graduate class in an interdisciplinary program on technology, arts, and media, the Odessa Steps sequence from *Battleship Potemkin* could be used to demonstrate editing as an effect. Also helpful in this discussion would be the kissing shot near the end of *Vertigo*, which uses filters, camera movement, and a sort of lazy-susan effect for the actors. In a class on American film comedy, clips from *Duck Soup*, *My Man Godfrey*, *Dr. Strangelove*, and other films could be employed.

Example from Gordon Theil, Librarian, University of California, Los Angeles

A professor who teaches a course on the Psychology of Music wants to use film clips to show how music changes character, feeling and message in film, employing semiotic and other acoustic, aesthetic, and cognitive theory for evaluative purposes.

Example from David Obermiller, Assistant Professor of History, Gustavus Adolphus College

In a course on Asian History, an instructor could use clips from *Rambo*, *Platoon*, and *Full Metal Jacket* to demonstrate varying attitudes to the Vietnam War.

Example from David Harrison, Associate Professor of French, Grinnell College

In a class on French literature, short clips from recordings of different theatrical productions of plays could be used. For example, in teaching the Molière play *Tartuffe*, the professor could compare different artistic interpretations of some of the most famous lines in the play. From clips from different productions, students would understand the nuances in the different characters and see how a comic moment could easily take on a tragic tone in the hands of the right actor. In short, the use of the clips would help the

students to understand the texts in greater detail. It would be impossible to achieve this effect if the instructor could not create clip compilations from DVDs.

Examples from Laurie A. Finke, Professor of Women's and Gender Studies, Kenyon College

The advantages of clip compilations for teaching purposes are obvious in film-oriented classes like a Gender and Film class, where an instructor might need to show clips from as many as a dozen films in every class. But films can be used in many other classes that are not primarily devoted to the study of film or media. In these instances, the ability to move easily from sequence to sequence may be more crucial than in a film class because in these classes the instructor may have less time to spare working with film. There are two ways in which multiple clips could be used in a non-film classes. A series of excerpts from films could be employed to illustrate a concept, for instance, gaze theory in a theory class or media representations of rape in an introductory class, in which brief clips from a number of films might be shown to compare them. In another class, the instructor might be trying to instruct students on how to read a particularly difficult film, say something like Julie Dash's *Daughters of the Dust*, in which a series of clips from various parts of the film would help students understand plot, characterization, cinematography, symbolism, dialect, foreshadowing, repetition, giving them some strategies for making sense of the film. If the teaching of a novel would be impoverished if a class could not look closely at specific passages of text, the teaching of a film would be doubly crippled by an inability to look closely at details of the film text. If the clip the instructor wants to show is not located at the beginning of a chapter on a DVD, the instructor must waste a great deal of class time fast forwarding and rewinding to find the

exact location she wants. A clip compilation eliminates that fumbling by assembling ahead of time all the clips required in the order they will be used for easy reference.

Examples from Ralph J. Begleiter, Professor of Communications, University of Delaware

Using multimedia examples and illustrations in university classrooms and lectures is vital -- perhaps even essential -- to helping today's college students understand and analyze important concepts in media literacy, media production and related communication, journalism and political science classes. Today's college classrooms and lecture halls are filled with students who have literally grown up on multimedia content. From their earliest television exposure to their childhood and teen-years video gaming, to their exposure to computer-screen multimedia, these students not only have developed with multimedia in their brain-stream every day, but they also respond powerfully to strong multimedia content as a result. Today's classrooms, of course, continue to operate on the kind of schedules customary for schools. Fifty-minute classes, 75-minute classes, and the occasional longer class session simply do not allow faculty to turn over their limited time with students to the producers of long-form multimedia. It's simply impractical to use a 60- or 90-minute preproduced program -- or an even longer movie - in such short class sessions. These programs must be excerpted if students are to learn about them at all in classrooms. And if they are to be compared and contrasted with other works on similar subjects, they must be presented by faculty in snippets which relate closely to (or contrast sharply with) competing viewpoints, technical styles or substantive approaches.

From a technical, teaching point of view, queuing up an excerpt occurring in the middle of a DVD might be possible if it were the only excerpt from a given video being

used on a single day. But classroom equipment is not capable of jumping quickly and efficiently from one place to another. It's ridiculous to ask students to retain their thought process while the instructor is fussing with video equipment to get to the next excerpt. This means it's essential to edit the multimedia before class, dropping snippets into presentations at the most advantageous point. Editing is essential to presenting a powerful multimedia example in class.

Finally, from a philosophical point of view, effectively prohibiting the use of multimedia in educational situations by requiring that programs be presented always in their entirety, always with many minutes of credit-rolls and always unedited would be a travesty for our students. They would be deprived of the powerful lessons they can learn from such media, just as their faculty would be deprived of the powerful teaching tools many producers create (knowingly or otherwise) in their multimedia products. Using multimedia in educational settings should be -- for the benefit of our students -- encouraged, not prohibited either by law or by the practicalities of time management. Encouraging (not merely allowing) faculty to excerpt, edit and trim multimedia content for their classrooms is an essential element in the nation's educational tool chest. To deny these effective tools to bona fide educators in an age when these tools are routinely used and disseminated on video-sharing web sites such as YouTube would be a bad joke.

A few examples:

- In a course called "Raiding the Lost Ark: History of TV News Documentary," students explore historically important television news documentaries, discovering their style, their significant political content, their writing, the technical techniques and their impact on

audiences and society. Many of these programs are too long to show in their entirety in a single class session. And they are certainly too long to be able to give students some compare-and-contrast opportunities in a single class. An instructor could trim them, excerpt them and juxtapose them, focusing on key teaching points about television news documentary form, rather than on the entirety of the message originally intended by the producers. Of course, the programs in their entirety are always available to students for viewing outside the classroom on their own through the library.

- In another course, called "Global Media & International Politics," students learn how media are used or influenced by governments and others to influence public opinion around the world. Excerpting, comparing and contrasting multimedia content from news broadcasts, webcasts and films is an essential part of the student experience in this class. Again, being able to use several examples in a single class session is vital to the lessons involved. And this cannot be accomplished without editing, excerpting or trimming the original products. Bits and pieces from interest-group videos, broadcast news programs, foreign news sources, and U.S. government broadcasts are vital to this class. Occasionally, an excerpt from an entertainment video would be a useful tool in the classroom. (A couple of examples: the "press conference" scene from the Broadway musical *Chicago*, as rendered in the Hollywood version, would help illustrate for students how journalists are manipulated by government

and others. It would be both impractical and wasteful to show the entire film merely to expose the students to the "Press Conference Rag." And an edited excerpt from TV's *The West Wing* illustrates the power of TV news images on public opinion and national security policy when volunteer troop casualties are shown on television.)

- In a class called "Broadcast News Documentary," where students create their own such program, some examples from the Edward R. Murrow/Fred W. Friendly series of the 1950's, as well as some from later eras in television documentary, are used. Conducting a single class on the Murrow/McCarthy conflict would be impossible without being able to edit, excerpt and trim the original trilogy.
- In a "Road to the Presidency" class about media and presidential election campaigns, the instructor would use excerpts of television documentaries about the national political conventions and about the presidential debates. It would be simply impossible to teach about key moments in the debates without showing at least some of them (Nixon-Kennedy in 1960, Bentsen-Quayle in the 1980's, Reagan-Carter in 1980, and many others.) However, it would be equally impossible (not to mention repetitious) to teach those lessons if several entire class sessions were consumed by being required to show those documentaries in their entirety, with no excerpting, no trimming.

- In an Introduction to Journalism class, imagine trying to introduce students to the challenges and possibilities of TV news without being able to excerpt key moments in broadcast journalism history.

Respectfully submitted,

American Association of Law Libraries
American Library Association
Association of Research Libraries
Music Library Association
Special Libraries Association

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February 2, 2009