TOPIC 8:

SECTION 110(2) AND THE USE OF COPYRIGHTED MATERIAL IN DISTANCE EDUCATION

Topic question

How does Section 110 affect the rights of those involved in presenting instructional material in digital environments and what would be the impact of pending legislative efforts in online settings?

Overview

Section 110 provides copyright users with additional use rights for public performances and displays of copyrighted works. Performance or display of material in the library (showing a video) or classroom (displaying a map or reciting part of play) or on a Web site (streaming the video or digital copy of a map or broadcasting the recitation of a play over the Internet) requires permission from the copyright owner. But Section 110 gives educational institutions additional use rights; arguably, school media centers or school libraries are covered as well, if those places are used for instruction within the school. These use rights are not given to other nonprofit libraries, such as a public library. Section 110 is an educator's provision, not necessarily a library provision per se. Section 110(2) governs the use of copyrighted materials" by or in the course of a transmission" and applies to distance education environments.

However, Section 110(2) contains many practical limitations on the use of copyrighted material in the modern virtual classroom. The rights granted to educators in Section 110(2) are unclear. Can educators allows the transmission over the Internet of course-related material under the most prevalent one-to-one distance education model (that is, remote broadcast to individual students at separate computers, at home or at work)? Section 110(2)(C) limits the category of works that may be performed in a transmission to two categories of works: nondramatic literary (reading from a text) or musical works (singing a song). Moreover, Section 110(2) requires that transmission be made primarily for "receptions in classrooms or similar places normally devoted to instruction." A school could broadcast a performance of a literary work to another school as part of a team-taught course, but it could not broadcast a performance of it to students who take the course from home.

Proposed legislation, passed in the Senate in the summer of 2001, and companion legislation pending in the House, would expand distance education rights but still penalize distance students, supporting the author's conjuncture that the Digital Millennium Copyright Act (DMCA) and copyright reform in the digital age are not technologically neutral as they claim. The legislation would expand the right of educators to use a wide variety of materials in remote learning environments but would still limit the use of works such as audiovisual material (a videotape) to a limited portion of the work.

What you need to know

Familiarity with the following is helpful to fully comprehend the discussion of this topic:

- Understand the basic categories of copyrighted works and operation of the performance and display rights of copyright owners

See: Janis H. Bruwelheide, *The Copyright Primer for Librarians and Educators* (2d 1995).

- Have some background on the debate over copyright issues in distance education

See: U.S. Copyright Office, "Report on Copyright and Digital Distance Education (A Report of the Register of Copyrights (1999))."

See: Tomas A. Lipinski, "An Argument for the Application of Copyright Law to Distance Education," *American Journal of Distance Education,* Vol. 13, No. 3, 1999, at 7.

Why watch this topic?

As more libraries provide services to remote users and through distance outreach, and as schools increase the reach of their instructional programs, these institutions find themselves hampered by laws written for the days before electronic media. When virtual outreach involves formal instructional services, the copyright law traditionally provides additional use rights beyond those of the Section 107 fair-use provisions. Using material in front of a classroom or via a Web site, so that remote students can access the class materials, implicates the performance and display right of the copyright owner.

Section 110 governs performances and displays in the classroom and related settings. Although mirroring the use of material in online settings that an instructor normally uses in live, face-to-face settings is completely logical, Section 110 does not appear to offer such flexibility. By design, Section 110 does just the opposite—often with harsh results. In addition, Section 110 reform to equalize the treatment of distance versus live students is controversial, and to some extent still limiting from a distance educator's perspective.

Background: Basic educational performance and display rights

Although Section 110 is a long, complex section of the copyright law, several provisions are most appropriate to school library and educational media settings. Section 110 operates as a limitation on the exclusive rights of copyright owners contained in Section 106, specifically the right of copyright owners to control performance and display of their copyrighted works. The various subsections indicate which uses are not infringements on the exclusive performance and display rights of copyright owners.

Section 110(1) provides that the following are not infringing activities: the "performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom, or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of

individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made."[251]

Several points should be made regarding the provisions of this section. First, the performance or display in Subsection (1) must be made by instructors or pupils, and cannot be done by guest performers or students not enrolled in the class. But the legislative history suggests that a guest lecturer is covered by the exception and may perform or display works consistent with the other section conditions. A performance or school-wide assembly is not allowed because this performance is not made in a classroom or similar place devoted to instruction, although this situation might conceivably be covered by Subsection (4) of Section 110.

The Section 110(1) exemption applies to any type of work, such as text, audio, video, and so on. This is one instance where, in comparing the rights of educators in front of live students (Section 110(1)) versus educators in distance~~t~~ education settings (transmissions under Section 110(2)), the law favors the use rights of live teaching over remote or distance teaching. This disparity is the main impetus behind the legislative reform of Section 110(2).

Under the current law, transmissions under Section 110(2) are limited to nondramatic literary and musical works only. A teacher, under Section 110(2), could read a text or sing a song, but could not show a video to distance students.

What is the nature of the performance right? "To 'perform' a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible."[252] Other items in the library may be displayed—Section 112 states that, "To 'display' a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially."[253] Some categories of works can be performed, although others can only be displayed; you cannot perform a piece of sculpture, nor can you display a song. A performance or display in a classroom could be the showing of an episode from the HBO series "Band of Brothers," a reading of a chapter from *The Great Gatsby*, or the singing of a Gershwin song.

In general, sound recordings have no performance right. You can always play a LP record, but the underlying music (musical work) of the composer remains protected. In addition, a sound recording has a performance right when the recording is performed by digital audio transmission.[254]

When Congress amended Section 106 in 1996, adding the performance right in sound recording via a digital audio transmission, it added a definition of digital audio transmission to mean "a transmission in whole or in part in a digital or other nonanalog format."[255] This definition is not terribly helpful but "plausibly implicate[s] most of the major conduits by [which] Americans now receive information, including television and radio broadcast, telecommunications, cable and fiber optics, direct satellite services, and even online interactive services."[256]

Because Section 110(1) applies to any category of work, the playing of a LP or music CD to a class does not matter, but in a distance education setting, the digital audio transmission of the music would trigger the performance right of the recording artist. Since Section 110(2) applies only to musical works (the composer of the underlying music) and literary

works, a performance right would still be needed.

Although Section 110(2) allows the school to avoid the need for a performance right from the composer (for the underlying musical work of the recording), the school would need a performance right from the performer to beam it over the Internet in conjunction with a class.

The Section 110(1) exemption is limiting because transmission must occur within the context of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction. Although the students and teacher need not see one another "it does require their simultaneous presence in the same general area."[257] Remote broadcasts are not allowed (covered by Subsection (2) of Section 110), but as long as the instructor and pupil are in the same building or general area, the exemption applies. This example allows for a transmission of material from one room to another because all the students could not physically fit into the same lecture hall.

The "teaching activity" language in Section 110 requires only that the content of the material be related to the curriculum. Although showing the Hollywood film adaptation of "The Last Temptation of Christ" is relevant in a theology class, it would not be considered relevant if shown in a physics class as an end-of-semester reward. The teaching activities do not include performances or displays "whatever their cultural or recreational value or intellectual appeal, that are given for the recreation or entertainment of any part of their audience."[258]

The Section 110(1) exemptions must be in a bona fide educational environment with students enrolled in a class. For example, showing a video to the Spanish Club members even in a classroom or school meeting room or to toddlers in day care does not qualify because the audience is not comprised of students enrolled in a specific class; showing a videocassette in a public library meeting room as part of Travel Night also does not qualify.

Some debate exists over whether the ad hoc gathering of two or three patrons in a public library or students to work on a project in the media center also infringes copyright. Is this performance public? Apparently so, since the exhibition of the video in the public library is still a public performance not qualifying for any of the exceptions under Section 110. A fair-use argument could be attempted, however, and might depend on the nature of the video and the amount of the video that is performed. (Ssee Topic 3.) If so, permission from the copyright owner, called a performance right, is needed.

Working backward, if the performance in the room with the study group is considered a public performance, the situation does not fall under one of the Section 110 exceptions, as the *instructional* and or the *enrolled student* component of Section 110 performance allowance is missing. The only recourse is to argue that either fair use allows the viewing (Section 107 is always available) or the viewing does not impinge on an exclusive right of the copyright owner.

The question is whether the ad hoc viewing is a public performance (triggering one of the exclusive rights of a copyright owner into play) for which permission, a performance right, is needed. Section 101[259] defines a public display or performance as one that either is made in a public place ("at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered") or is a transmission to an unrestricted audience.

The viewing of the video by two or three patrons in a public library, even if each knew one another, is a public performance because the library in

general is a place open to the public according to Section 101.

Although no court cases exist involving videocassette viewing, Section 110, and public libraries, analogous precedent supports this distinction. In *Columbia Pictures Industries, Inc. vs. Aveco, Inc*.[260] and *Columbia Pictures Industries, Inc. vs. Redd Horne, Inc*.,[261] the viewing of videos by customers in a video store, even where the viewing is done privately, was held to be a public performance, because the store where the booths were located was public. On the other hand, the viewing of videodiscs in a hotel room by guests is not a public performance because hotel rooms, once rented for occupancy, are deemed private.[262] In contrast, a videotape system installed in a hotel for remote operation by hotel guests for transmitting selected videotapes for viewing on TVs in hotel rooms is public performance requiring copyright license.[263]

Finally, the language in Section 110(1) requires that "in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made." Although not targeted specifically at so-called off-air taping on personal video recorders, this language suggests that if a an off-air tape, made say five years ago or from a pay-for-view station (and thus in excess of the 10- or 45-day viewing limitations for broadcast programming contained in the off-air taping guidelines)[264] were shown, the Section 110(1) exemption does not apply to its use in the classroom, since it is not a lawfully made copy. An argument can be made that since the off-air recording guidelines are so well known that their provisions are common knowledge among educators, and the "knew or had reason to believe" requirement would be satisfied.

Main discussion

Applying Section 110 to distance education settings requires examination of Subsection (2). Section 110(2) covers the transmission rights for use of copyrighted works in nonprofit educational settings. The transmission rights, however, apply only to two categories of works: nondramatic literary (text, such as a book or poetry reading) or musical works. If a faculty member wanted to read from a Faulkner short story or a Maya Angelou poem and stream (transmit) the reading over the university's distance education technology, this action is allowed. But if the same faculty member desired to let his or her distance students watch (load and stream) a documentary about Faulkner or a theatrical movie version of one of his stories, a performance right is needed. A performance right is required for the transmission of an "opera or musical comedy or motion picture"[265] since these are dramatic, dramatic musical, motion picture, or audiovisual works.

Performance and display of nondramatic literary and musical works

Section 110(2) allows a faculty member to display a nondramatic literary work, such as a map, chart, or diagram, the same way a teacher might stand in front of a live class under Section 110(1), to a group of remote students. As enacted in 1976, Section 110(2) envisioned a faculty member doing the same sort of teaching and display, except that his or her presentation is recorded and then broadcast remotely to students at another location, at another school, remote learning site, and so on.

What of the practical necessity of the Internet and distance education today? Although a university could adapt the old "broadcast" notion of distance education and stream a presentation (record the lecture and display of the map or chart together) over the Internet via its distance education technology, it is more likely that today the supporting documentation (the map or chart) is first scanned (reproduced) and then loaded onto the Web site for display to students refer to as they follow the lecture over the web. Although the actual display of the map or chart or diagram to live or remote students is allowed under Section 110(2), the section says nothing of the copying that must first occur to place the work on the Web site for remote students to view. If the lecture is streamed live and the diagram incorporated into it, the requirements of Section 110(2) appear to be met. Because no reproduction is then made, the material is merely displayed and broadcast "as is" to students.

Although Section 110(1) requires an audiovisual work performed or displayed to a live audience be by means of a copy that was lawfully made, no such language appears in the current version of Section 110(2). This lack of specificity might mean that if the map or chart that was first reproduced by the school before it was transmitted (displayed) to the distance students exceeded fair use (it was not a lawful copy), the action does not matter since requirement of a lawfully made copy is not present in Section 110(2). This situation suggests you could use an unlawful infringing copy (under Section 107, for example) of a work to undertake a lawful display to remote students under Section 110(2).

This result seems odd. More likely, Congress simply did not anticipate the current state of distance education and wrote the language of Subsection (2) when distance education consisted of remote television broadcasting and no need existed to convert most works into digital format for transmission to remote students.

How Section 110(2) may limit use in distance education

The existing statutory structure of Section 110(2) may limit the use of material under current distance education scenarios. Similar to the curriculum requirement of Section 110(1) (performance or display must occur in a classroom or similar place devoted to instruction), Section 110(2)(A) requires that the transmission of the "performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution."[266] The legislative history indicates that the "concept of 'systematic instructional activities' is intended as the general equivalent of 'curriculums' but it could be broader in a case such as that of an institution using systemic teaching methods not related to specific coursework."[267]

Although the definition of what curricula mean is clear, the meaning of "systemic teaching methods" is not. Perhaps transmitting material as part of general instruction on how to use Web-based instructional technology or perhaps transmitting the proceedings of the opening university orientation or convocation to remote campus locations and to distance students could be included and qualify under the Section 110(2) performance and display right. The activities, if not within the actual curriculum of a course, must still be "in accordance with the pattern of teaching established by the governmental body or institution."[268]

A second requirement offers a second content nexus—performance or display must be "directly related and of material assistance to the teaching

content of the transmission."[269] The legislative history offers little guidance but this language suggests, like the Section 110(1) requirement that the material be related and integrated into the curriculum, material used as reward or for entertainment purposes is not allowed. Displaying a map or chart might meet this content integration nexus test, but in a Section 110(1) showing of "Saving Private Ryan" this section's requirements might mean that after the D-Day landing scenes the video is stopped and students listen to a WWII veteran talk about what combat was like, then discuss the accuracy of the film. Congress and the courts offer little guidance as to how much integration must occur.

Finally, the reception must be made primarily for transmission in the classroom or similar places normally devoted to instruction.

Section 110(2)(C)(ii) and (iii) also allow transmission to those with disabilities or government employees, persons to whom a transmission is directed because of disabilities or other special circumstances prevent attendance in classrooms or similar places normally devoted to instruction, "or by officers or employees of governmental bodies as a part of their official duties or employment."[270]

Factors to determine whether the purpose of a transmission is primarily for a designated group—classroom students, disabled or other special students (preschool children, displaced workers, illiterates, and shut-ins), government employees as part of a training exercise—include the "subject matter, content and the time of the transmission."[271] That the public at large might also be able to receive the transmission does not disqualify its use under the Section 110(2) exemption.

The legislative history suggests the purpose behind the initial transmission is the determining factor—is the transmission made for regular students or disabled learners, for example, and others may also pick up the transmission? Or is the transmission made for the public at large and the educational institution intends to piggyback or incorporate the broadcast into its curriculum? In the latter case, that some people in the qualifying groups can receive the transmission will not save anyone from liability. The legislative history makes clear that telecourses and other transmissions in the course of for-credit instruction qualify.

Are transmissions to students in the contemporary distance education model (a model that anticipates most students access the material from their personal computer stations at home or the office) included in the current Section 110(2)(C)(i) requirement? Apparently not. Although the transmission needs only to be made primarily to "classrooms or similar places normally devoted to instruction," does this requirement offer enough legal breathing room for participants and instructors in the contemporary distance education model? Does this limitation prohibit transmission to distance students at home or at work? Apparently so, since the transmission is not primarily to classrooms or similar places normally devoted to instruction.

Although a bedroom or office might be the only place where the distance student of the 21st century receives his or her remote instruction, unfortunately, the bedroom or office is not a place normally devoted to that instruction. The inability to apply Section 110(2) to the typical distance education session is why many are calling for legislative reform.

Recent efforts have been made to amend the subsection to allow for an expansion of the categories of Subsection (2) works and the places where the reception can be received.[272]

Section 110(2) reform

Reform to Section 110(2) is proceeding. For example, Senate Bill 487 (the companion House of Representative's is H.R. 2100) passed June 6, 2001. According to one bill forecasting service, since S. 487 was referred to the House, it has an 86% chance of passing committee vote and a 71% chance of passing before the full House.[273]

According to the Senate Report, "The Act expands the exempted copyright rights, the types of transmissions, and the categories of works that the exemption covers beyond those that are covered by the existing exemption for performances and displays of certain copyrighted works in the course of instructional transmissions. Thus, for example, it allows transmissions to locations other than a physical classroom, and allows for performances of reasonable and limited portions of audiovisual works, sound recordings, and other works within the scope of the exemption."[274] The goal of the Section 110(2) revision, in the words of the 2001 Senate Report, is to "remove the concept of the physical classroom."[275]

S. 487 replaces the introductory statement of Section 110(2) with language that excludes certain instructional material. The plain language of S. 487 suggests that if a work is "produced primarily for performance or display as part of mediated instructional activities," it does not qualify for the expanded performance and display right of the revised Section 110(2). This provision "limits the relevant materials by excluding those primarily produced or marketed for the exempt activity."[276]

Apparently this provision includes materials marketed primarily for use in the classroom. These materials are instructional by their intent, design, and market. This result seems odd. Materials designed for use in the classroom are specifically excluded, but Congress was concerned that the distance environment not be used to supplant existing instructional materials markets. Take the example of textbooks: "Because textbooks typically are not primarily produced or marketed for performance or display in a manner analogous to performances or display in the live classroom setting, they would not per se be excluded from the exemption under the exclusion in the opening clause."[277] A teacher could, in a distance education environment, display several pages of graphs from a textbook as the textbook is not "produced primarily for performance or display as part of mediated instructional activities."

The revised Section 110(2) right would only apply to accredited nonprofit educational institutions, and not all nonprofit educational institutions that might offer remote instruction.

The new Section 110(2) uses the term "mediated instructional activities" to indicate that any use of material must be "mediated." It must be a part of the normal teaching that would occur if the course were not online. The material used must be part of the class experience. Further, and again with idea of preventing distance education teachers from putting material on the course Web site, the use of the material must be "controlled by or under the actual supervision of the instructor."[278] Congress intended the use of materials in the distance education classroom be no more extensive than otherwise occurs in the traditional classroom. Congress did not want the expanded rights of educators in distance settings to be a cart blanche for the inclusion of vast amounts of digital content into online instruction. If the material would not be used in a live classroom, it should not be added to the online curriculum just because the material is easy to scan and load. "This latter concept [mediated instructional activities] is intended to require the performance or display

to be analogous to the type of performance or display that would take place in a live classroom setting. Thus, although it is possible to display an entire textbook or extensive course-pack material through an e-book reader or similar device or computer application, this type of use of such materials as supplemental reading would not be analogous to the type of display that would take place in the classroom, and therefore would not be authorized under the exemption."[279]

The new definition of mediated instructional activities "does not refer to activities that use, in one or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies, or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use."[280] This definition does not include "electronic course packs, e-reserves, and digital library resources" as these sorts of materials are not part of the analogous performance and display of materials that typically occur in live instructional settings.[281] The point: to have the use of copyrighted material in distance environments mirror that which occurs in traditional classrooms.

The Senate Report recognized that digital distance technologies could displace the need for textbooks, course packs, etc. if such material could be loaded onto the distance education course web site. In K-12 settings, textbooks and the like are often not purchased by each student as is typical in higher education. The Senate Report was aware of this and its observation of that fact suggests that the revised Section 110(2) should not be used to require K-12 distance students to begin purchasing textbooks if that was not the normal practice. The point is to determine is the normal practice for live students and to mirror it in online settings.

The proposed Section 110(2) adds a provision that the work performed or displayed be a lawfully made copy. However, unlike Section 110(1) which places the responsibility for ensuring that the work was lawfully made on the "person responsible for the performance," proposed Section 110(2) places the burden on the transmitting government body or accredited nonprofit educational institution. In addition, under the proposed Section 110(2) the "lawfully" made requirement applies to any category of work performed or displayed under its provisions, whereas existing Section 110(1) applies the "lawfully made' proviso only to audiovisual works.

Even if S. 487 is enacted by Congress an important limitation remains the uneven treatment of various copyrighted works that might be performed or displayed in the distance classroom. The performance must be limited to nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in a amount comparable to that which is typically displayed in the course of a live classroom session." Proposed Section 110(2) expands the reach of the educator's right to include the performance of other works such as a video (audiovisual work) but still limits performance of that work to a reasonable and limited portion. The display right remains unchanged ("or display of a work in a amount comparable to that which is typically displayed in the course of a live classroom session"), as long as an educator does not display more of a work to distance students than he or she would to students on the premises because the remote format makes display easier.

Many additional requirements are included in the proposed Section 110(2) rights, but two continue the active shift Congress is forcing institutions to undertake.[282] First, as much as is technologically feasible, the reception of a

transmission must be limited to students officially enrolled in the course. If the transmission is digital—this clause applies to Web-based distance education transmissions—the institution would have to employ technological measures that prevent both the retention of the work beyond the time of the class session and unauthorized further dissemination of the work. A school could use the display privilege in proposed Section 110(2) to mount curricular support materials or record class sessions for later review. But you could not allow students the capacity to retain the work on their own computer or allow students to download and later upload (further dissemination) the work to others.

In addition, the institution could not interfere with any technological measure a copyright owner placed on its works to prevent either unauthorized retention or dissemination. The Senate Report suggests modeling access to parallel normal class session access. In distance education environments, however, the normal class session is not necessarily tied to a specific temporal unit, such as Mondays and Wednesday from 10 to 11 a.m. The Senate Report suggests flexibility in allowing material to remain posted on the institution server throughout the duration of a course, beyond the set class session but that the use could be limited by encrypting the work and limiting access to the keys and the period in which such file may be accessed."[283]

Under proposed Section 110(2) the educational institution must "institute[ ] policies regarding copyright, provide[ ] informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provide[ ] notice to students that materials used in connection with the course may be subject to copyright protection."[284] This quote is the most definite articulation of what a general copyright compliance program should contain that Congress has provided either in the DMCA or since. Although the proposed revision to Section 110(2) does not advocate the institution provide training and in-service sessions, it does require extensive documentation (policies and informational material) be developed for teachers, students, and staff. Students must also receive notice of the copyright on material accessed in conjunction with the course. This requirement anticipates the development and use of a notice similar to the photocopier notice now required under Section 108(f)(1) and the regulations promulgated under that section.[285] The requirement does not impel the institution to undertake any active training or to assess whether faculty, students, and staff have even a basic level of understanding of the material so developed and distributed.

Unresolved points or issues

- As Section 110(2) exists, what rights do distance educators have under its provisions?
- Section 110(2) does not contain a "lawfully made" copy requirement as Section 110(1) does; was this lack a drafting oversight, or need not the Section 110 performance or display be from a lawfully made copy?
- Do attempts to amend Section 110(2) include provisions to offer educators in online settings the same rights as those who teach in face-to-face settings?

Resources

Helpful URLs

www.loc.gov/copyright/disted Copyright Office Study on Distance Education. Includes Section 403 of the Digital Millennium Copyright Act (pdf format); important dates; and claims that the Copyright Office posts copies of all public notices, written comments, and other material relevant to the distance education study on this Web page as the information becomes available.

www.westga.edu/~library/jlsde/vol1/2/LGassaway.html L. Gassaway. (1998) "Distance Learning and Copyright." *Journal of Library Services for Distance Education 1*(2).

www.educause.edu/ir/library/html/cem9932.html L. Gassaway. (1999) "Distance Learning and Copyright: Is a Solution in Sight?" *Cause/Effect 22*(3).

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K.D. Crews. (1999) "The U.S. copyright distance education report." *Information Outlook, 3*(10), 44, 48.

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END NOTES

[251] 17 U.S.C. § 110(1) (2000).

[252] 17 U.S.C. § 101 (2000).

[253] 17 U.S.C. § 101 (2000).

[254] 17 U.S.C. § 106(6).

[255] 17 U.S.C. § 101.

[256] John W. Hazard Jr., Copyright Law in Business and Practice § 4.04[5][b][ii], at 4-41 (2000).

[257] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA. 110, Historical and Statutory Notes).

[258] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA. 110, Historical and Statutory Notes).

[259] 17 U.S.C. § 101 (2000).

[260] *Columbia Pictures Industries, Inc. vs. Aveco, Inc*., 800 F.2d 29 (3d Cir. 1986).

[261] *Columbia Pictures Industries, Inc. vs. Redd Horne, Inc*., 749 F2d 154 (3rd Cir. 1984).

[262] Columbia Pictures Industries, Inc. vs. Professional Real Estate Investors, Inc., 866 F2d 278 (9th Cir. 1989).

[263] *On Command Video Corp. vColumbia Picture Industries*, 777 F Supp 787, (N.D. Cal. 1991).

[264] Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes, reprinted in U.S. Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians 26 (1993).

[265] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA 110, Historical and Statutory Notes).

[266] 17 U.S.C. § 110(2)(A) (2000).

[267] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA 110, Historical and Statutory Notes).

[268] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA 110, Historical and Statutory Notes).

[269] 17 U.S.C. § 110(2)(B) (2000).

[270] 17 U.S.C. § 110(2)(C)(i)-(iii) (2000).

[271] H. Rpt. No. 94-1476, 94th Cong. 2d Sess. 56-57 (1976) (reprinted in 17 USCA 110, Historical and Statutory Notes).

[272] U.S. Copyright Office, Report on Copyright and Digital Distance Education 140-170 (1999) (Part VIB: Analysis and Recommendations).

[273] State Net bill forecast service available in the LEXIS LEGIS Library: BLCAST File.

[274] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[275] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[276] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[277] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[278] S. 487, 107th Cong., 1st Sess. (2001).

[279] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[280] S. 487, 107th Cong., 1st Sess. (2001).

[281] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[282] Tomas A. Lipinski, "An Argument for the Application of Copyright Law to Distance Education," *American Journal of Distance Education*, Vol. 13, No. 3, 1999, at 7. See also, U.S. Copyright Office, Report on Copyright and Digital Distance Education (A Report of the Register of Copyrights (1999).

[283] S. Rpt. No. 107-31, 107th Cong. 1st Sess. (2001) (no pagination available in the LEXIS Legis Library).

[284] S. 487, 107th Cong., 1st Sess. (2001).

[385] 37 C.F.R. § 201.14 14 (Warnings of copyright for use by certain libraries and archives).