



May 14, 2021

VIA EMAIL ONLY

Regan Smith
General Counsel and Associate Register of
Copyrights
U.S. Copyright Office, Library of Congress
101 Independence Ave, SE
Washington, DC 20559-6000

**Re: Response to Post-Hearing Letter on Proposed Class 1 – Docket No. 2020–11,
Exemptions to Prohibition Against Circumvention of Technological Measures
Protecting Copyrighted Works**

Dear Ms. Smith:

On behalf of the Joint Creators and Copyright Owners (the “JCCO”), I respectfully submit this response to your letter of April 16, 2021. Your letter presented two questions to the JCCO. First, you inquired as to “how licensors of full-length motion pictures for educational purposes have responded to the pandemic’s disruption to education.” Second, you inquired as to our “views on regulatory language that would address any disruption to the educational licensing of full-length motion pictures during the pandemic.”

1. Responses to the pandemic

The pandemic not only disrupted educational activities and other aspects of everyday life, but also the filmmaking process and the distribution and public performance of motion pictures, especially with respect to new titles. However, in addition to continuing to increase the number of titles available through educational licensing services and through other digital offerings (such as new streaming services that sometimes even offer for at-home viewing theatrical window titles), MPA members have taken steps to provide audiences with increased remote access to motion pictures and related content during the pandemic. Some of these efforts are described on MPA’s website, <https://www.motionpictures.org/the-film-television-and-streaming-industry-responds-to-covid-19/>.

These efforts include MPA members providing free resources to teachers and families who are self-distancing at home during the pandemic. For example:

- Disney partnered with the Khan Academy to launch Imagineering in a Box – a 32-course online curriculum showing kids how the company’s legendary Imagineers create immersive entertainment experiences.

- Netflix provided a selection of documentary features and series available on the Netflix US YouTube channel to allow students and teachers easier access. Additionally, each title included educational resources, such as Q&As with some of the creators behind the projects.
- Paramount and ViacomCBS launched #AloneTogether and #KidsTogether offering news and information as well as free kid-focused entertainment and educational resources across all their platforms.
- Sony Pictures launched a YouTube Channel, Sony Pictures Kids Zone, providing parents and kids with a one stop central destination for interactive fun, physical movement, learning, and hands-on activities.
- Comcast NBCUniversal, through Xfinity, has educational programming available for free, organized by grade level for teachers and students.
- WarnerMedia launched CNCheckIn through Cartoon Network. The program offers educational and entertainment programming to children for free.
- The Motion Picture Association has brought its “Film School Friday” program online. The program connects students with industry leaders and creators behind some of today’s biggest films and television shows.
- Disney launched Disney Magic Moments – a new website which provided audiences at home with early movie releases, free content, stories, games, and educational resources from Disney, Pixar, Star Wars, Marvel, and National Geographic.
- Actors like Ming-Na Wen, Yvette Nicole Brown, Ally Maki, John Stamos, Jeff Goldblum, and others read some of their favorite Disney stories in a series – “Storytime with...” – which was featured across Disney’s social media channels for free.
- Walt Disney Animation Studios taught fans how to draw popular Disney characters through its #DrawWithDisneyAnimation series on social media channels, like YouTube.

MPA members also remain eager to meet the needs of potential licensees through their ordinary licensing practices. Studios make available on their websites contact information for departments in charge of considering and processing license requests, and endeavor to respond to such requests in a timely and reasonable manner. Sometimes, studios even issue gratis licenses for educational users.

2. Addressing “any disruption” to educational licensing

The JCCO oppose any exemption that would allow for circumvention of access controls to facilitate reproducing and digitally streaming/distributing full-length motion pictures for educational purposes. As the Register and the Librarian concluded in 2018, unauthorized

dissemination of full length motion pictures for educational purposes is not identified by the Copyright Act or by existing precedents as a lawful use. Neither Section 107, nor Section 110, allows for such uncompensated uses of motion pictures. Although the pandemic has altered the world in which we all live and learn, it has not altered the fundamental principles underlying copyright law. This is especially true given that a thriving marketplace exists for educational licensing of motion pictures for distance learning. There is no evidence in the record to indicate that the market for such licenses has been disrupted. Rather, the record evidence indicates that the availability of licenses has increased during the pandemic, and that schools are able to, and have, acquire(d) such licenses in increasing numbers. Even assuming *arguendo* that some titles may not be available through services that provide bulk educational licensing, many of those titles are accessible to students at reasonable prices through subscription streaming services, on-demand television services, as rentals or long-term downloads, and on discs.

Given recent developments related to the increasing rate of vaccinations and announcements concerning the ability of schools across the country to reopen, we are optimistic that the substantial impact of the pandemic on students will be materially diminished by October of 2021, when the Librarian will issue new regulations at the conclusion of this proceeding. To create an exemption that would presumably be based upon an unprecedented conclusion that a pandemic alters the scope of copyright owners' exclusive rights in these circumstances would be misguided. The long-term impact of such an interpretation of the law by the Register and/or the Librarian could be unpredictable, widespread and diverse. It could disrupt the very licensing markets that Section 1201 has helped to foster. We respectfully submit that selecting such a path would be ill advised.

Should the Register and/or the Librarian nevertheless choose to craft an exemption to allow for circumventing access controls on copies of motion pictures in disc form that are owned by schools for the purpose of reproducing them and digitally disseminating them to students during a defined period of time to address the current pandemic, the exemption should at least be confined to a period of time during which the COVID-19 virus causes governmental bodies to prohibit in-classroom learning. In addition, circumvention should only be allowed to transmit a work to registered students of accredited educational institutions and where a motion picture is unavailable through authorized channels. Specific security measures to prevent unintended harm to copyright owners would be extremely important. Finally, when the exemption expires as a result of in-person learning being an option for schools, the regulation should require the deletion of the copies created under its auspices and the cessation of unauthorized digital dissemination of works.

Respectfully,

/s/J. Matthew Williams
Partner of
MITCHELL SILBERBERG & KNUPP LLP

Cc: Anna Chauvet, Associate General Counsel