



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

Clinical Program

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United States Copyright Office  
Library of Congress  
101 Independence Avenue SE  
Washington, DC 20559

May 14, 2021

Dear Ms. Smith,

Thank you for the opportunity to testify at the recent hearing on Proposed Class 1. We appreciate your follow-up questions. We respond to the two questions you ask in your letter, and a third raised in questions to both Professor Peter Decherney and Student-Attorney Jesse Spiegel during their oral testimonies.

### **Question 1**

The Copyright Office asked:

**“Joint Educators reference a number of educational institutions/organizations in its written comments and testimony (e.g., CSforALL, LinkedIn Learning, Osmosis), though the record is somewhat unclear as to their accreditation or for-profit status. Accordingly, for each educational institution/organization already referenced in the record, please indicate whether the institution/organization is for-profit or nonprofit and unaccredited or accredited.”**

### **Introduction**

Throughout the entirety of this Eighth Triennial rulemaking proceeding, Joint Educators have advocated for the ability of online educators to incorporate short clips into their online learning materials. Numerous educators and preparers of online learning material have joined together with traditional educators to form a new coalition and support the new exemption before you, regardless of their profit and accreditation statuses. One of the main themes present at the heart of our petition is a simple concept of equity – learners should be entitled to the same quality of education irrespective of venue. Nevertheless, we were asked to identify the profit and accreditation statuses of coalition members and draw distinctions based on a steadily blurring line. We respond to your question about the educational organizations discussed in our written comments and testimony below.

## **Answer**

Osmosis.org is an unaccredited for-profit medical health education company that delivers high-quality content from medical experts which uniquely integrates proven cognitive science techniques with award-winning videos, cutting-edge technology, and seamless learner experiences.

LinkedIn Learning is an unaccredited for-profit company with on-demand video-based content that offers more than 16,000 courses, taught by industry experts in software, creative, and business skills.

CSforALL is an unaccredited non-profit organization that serves as a central resource for over 1100 member organizations devoted to bringing computer science education to all US K-12 students, both in and out of school. It connects providers, schools and districts, funders, and researchers who strive to provide young learners with quality computer science education. Some of these are accredited public or private schools and districts, but many are non-profit organizations and projects. For example, there are members like Girls Who Code who operate clubs and afterschool/summer programs across the US, or tech events, clubs and camps operated by 4-H or Girl Scouts.

Lastly, Musora Media is an unaccredited for-profit company and leader in online music education that provides online music lessons through its subsidiary platforms Drumeo, Pianote, Guitareo, and Singeo.

## **Conclusion**

Regardless of profit and accreditation statuses, the reality before us is that learners now seek the educational services they want and need from a wide variety of sources that go beyond the traditional education ecosystem. Our proposed exemption does exactly that by embodying the spirit of the TEACH Act which anticipated the advancement of technology and the Internet as an opportunity for the country to offer breadth and equity in education. There is a broad spectrum of commercial and non-commercial providers, such as Osmosis, CSforALL, Musora Media, and LinkedIn Learning, that can work both independently and collaboratively with traditional educational institutions to provide learners with a comprehensive learning experience.<sup>1</sup>

Furthermore, case law and the Supreme Court have stated time and time again that commercial use does not serve as a bar to fair use – especially if such use is transformative.<sup>2</sup> In *Campbell*, the

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<sup>1</sup> See Joint Educators reply comment.

<sup>2</sup> See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 568, 579 (1994) “The goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works. Such works thus lie at the heart of the fair use doctrine’s guarantee of breathing space within the confines of copyright;” see also American University School of Communication Center for Social Media, et al., *Code of Best Practices in Fair Use for Academic and Research Libraries*, [https://cmsimpact.org/wpcontent/uploads/2016/01/code\\_of\\_best\\_practices\\_in\\_fair\\_use\\_for\\_arl\\_final.pdf](https://cmsimpact.org/wpcontent/uploads/2016/01/code_of_best_practices_in_fair_use_for_arl_final.pdf) (Jan. 2012) (stating that fair use is “healthy and vigorous in broadcast news and other commercial media, where references to popular films, classic TV programs, archival images, and popular songs are

Supreme Court stated, “the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.”<sup>3</sup> Here, the educational uses we propose are highly transformative. Through the incorporation of short audiovisual clips in a tailored course discussion, educators and preparers of online learning material allow online learners to become more engaged with their work by providing visual examples of a concept being taught.

We also note that for-profit, nonprofit, and unaccredited online learning platforms adhere to and respect the principles of the DMCA. Online learning platforms in the Joint Educators coalition have registered learners that enroll in courses to advance marketable and lifelong skills. They employ sophisticated digital protection measures, limit access to materials to students currently enrolled in courses, and make transformative uses of the clips constituting fair use. The Joint Educators’ online learning platforms are not designed to entertain, but instead operate for the noble purpose of providing quality educational instruction to enhance the skills sets of learners of all backgrounds and needs.

Educators and preparers of online learning materials that use online learning platforms should not be barred from the fair use of short clips of movies and TV shows based on their commercial or accreditation status. *Joint Educators again emphasize that we do not ask for the creation of additional educational uses but simply a new exemption that expands the Class 1 beneficiaries of current educational circumvention exemptions to include educators and preparers of online learning materials and allows them to incorporate short audiovisual clips into their learning materials.* This is an educational use approved by the Copyright Office and the Librarian of Congress that has been consistently renewed for the K-12, Colleges and Universities, and existing MOOC exemptions for nearly a decade.

## **Question 2**

The Copyright Office asked:

**“In addition, Joint Educators provide some examples of proposed use but do not indicate which educational institution/organization would like to engage in such proposed use (e.g., use of the clip from “The King’s Speech”). For examples already in the record not attributed to a specific educational institution/organization, please indicate which educational institution/organization would like to engage in such proposed use.”**

## **Introduction**

Throughout this Triennial proceeding, the Joint Educators have proposed numerous examples of short clips of movies and TV shows that educational organizations could use to enhance the educational quality of their online learning courses. However, we would like to note that the goal

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frequently unlicensed. Trade and academic publishers regularly rely on fair use to justify the incorporation of third-party material into books they produce.”).

<sup>3</sup> *Campbell*, 510 U.S. at 579.

of the proposed exemption, if granted, would be to allow educators and preparers of online learning materials using online learning platforms to use short clips from any movie or TV show if it will significantly contribute to learning. Our proposed examples that were included in the record are representative of the types of broad educational purposes for which these short clips can be used.

### Answer

At the Copyright Office's request, the Joint Educators have identified which educational organizations may wish to use the proposed examples provided in the record.

Osmosis.org wants to use short clips to help medical patients and their families understand complex medical conditions. A clip of Peter Dinklage, in character as Tyrion Lannister from *Game of Thrones*, can show the isolation and pain sometimes experienced by those with achondroplasia (dwarfism). Presenting this emotional scene for an educational rather than entertaining purpose will provide unique insight to allow medical students to better understand the condition that would not be gained if Osmosis.org could not use short motion picture clips in its materials.

Osmosis.org also seeks to use a short clip from the Netflix TV series "Stranger Things" because both the character Dustin on the show and his real-life counterpart, actor Gaten Matarazzo, have a rare genetic condition called cleidocranial dysplasia (impacts growth of bones and teeth).

Osmosis.org could also use a clip from *The King's Speech* that shows therapeutic techniques the main character practices in overcoming a speech impediment. This provides an example for medical students to use with their patients struggling with similar speech impediments. Likewise, the same short clip could be used to help medical professionals and family members gain a better understanding of the struggles that a patient with a speech impediment may experience.

CSforALL, who formed as a central hub of computer science education for U.S. youth in and out of school, has members that want to use short clips from the TV show *The Big Bang Theory* in its online STEM courses to discuss quantum computing as a cutting-edge area of computer science. CSforALL shares that its members could also make educational use of short clips from the movie *Hidden Figures* to show learners examples of complex mathematical problem solving for fascinating, cutting-edge problems. During Professor Peter Decherney's testimony, there was agreement that the uses of these types of short clips are transformative fair use.

CSforALL members could include short clips from TV shows that feature aspirational role models for underrepresented students. For young STEM scholars, watching Mariana Foster, a Latina software engineer, develop ideas for a new "app" can serve to introduce ways that computing companies initiate creative new projects.

There is a phenomenon of youth programming that may demonstrate important skills, such as finding work-life balance or choosing a career path, that will help young learners prepare for a successful future. Some examples of TV shows that CSforAll confirms its member organizations could use and find valuable educational short clips from include: Disney's "Doc McStuffins"

(animated stuffed animal doctor), “Girl Meets World” (young girls excelling in school and the arts), Freeforms’ “The Fosters” (tells the story of a diverse blended family), and ABC’s “Blackish” (American sitcom; anesthesiologist and advertising executive balancing work and home challenges).

Similarly, LinkedIn Learning sees a place to use short clips from the TV show *Mr. Robot* (cyber-vigilante TV series) to enable its educators teaching ethics in coding by showing fictional acts of hacking without the danger of educators re-creating these illegal acts themselves.

Musora Media (consisting of Drumeo, Pianote, Guitareo, and Singeo) would like to use clips that show students how to play certain complicated techniques. For example, a clip of Eddie Van Halen performing how to dampen the sound of guitar strings using the palm of his hand (a skill called palm muting) and another showing how to play notes in rapid succession without having to pick each note (a skill called hammer-ons) teaches through example signature guitar techniques. These skills are better taught utilizing clips of masterful players because merely describing the necessary techniques is not sufficient and music instructors may not be able to perform the same quality examples of techniques as the musicians that perfected them.

Musora Media would enhance its online education courses by including short clips of musical performances from movies and TV shows that demonstrate nuanced techniques. The educational value for a trumpet learner to see Louis Armstrong’s embouchure (mouth position on the trumpet’s mouthpiece) in a clip from his renowned performance in *Hello Dolly*, Dooley Wilson’s finger techniques in his piano performances in *Casablanca*, or a few moments of how the great drummer Jeff Porcaro bends his wrists to achieve the “shuffle” sound in the “Rosanna” shuffle, cannot be understated and should be available to all aspiring musicians.

Some proposed examples provided in our comments are more theoretical. For example, the Joint Educators believe that music and dance educators would benefit from including short clips of performances of Bob Fosse-style dance moves in *Damn Yankees* and bicycle horns to make the special sound of taxi horns the orchestral piece featured in the *An American in Paris* movie for in their online educational offerings.

### **Fair Use**

Lastly, we reiterate that the creation of this exemption is fully consistent with § 107 of the Copyright Act. The proposed uses of audiovisual materials in the record are the same as those already accepted as qualifying fair use in previous rulemaking proceedings. The proposed exemption is not attempting to change the types of educational uses that are being exempted. Instead, we only seek an expansion of the users whose identical educational uses would likewise qualify as fair use.

### **Question 3**

During the testimonies, both Professor Peter Decherney and Student-Attorney Jesse Spiegel were asked questions about what we mean by “educator” in the exemption that we seek.

We would like to respond further here.

The Educators working with online learning platforms are sophisticated and serious educators who have expertise in their fields.

By way of example, we turn to medical online learning platforms, of which we have three signatories: Osmosis.org, Lecturio.org and SketchyMedical.org. In their field, the one of medical education, the World Health Organization (“WHO”) has thought extensively about the definition of educator. WHO states that their online educators are “teaching staff with competencies in primary care... [who] provide future health professionals not only with knowledge in the field, but also with role models which can stimulate them to choose this career orientation.”<sup>4</sup>

WHO, further, sets out the critical need for educators in the medical field to make their teaching available around the world, in clear and robust form, as quickly as possible. It is an urgent US need; it is an urgent global need.

WHO, in its publications, notes the criticality of online teaching:

- “educational capacity is a key factor in addressing global health workforce shortage”.<sup>5</sup>
- “digital education is attractive for employed health professionals for convenience reasons and this can foster positive changes in their attitude towards increasing their learning”<sup>6</sup>
- “Most technologies have a high degree of interactivity between learners and the educational materials provided, and between fellow learners and educators, and this can be applied to health professional education. A high level of customization allows online digital education to be adjusted to learners’ needs, requirements and topics; while accessibility enables students to learn at any time and pace.”<sup>7</sup>

The Osmosis.org and other nontraditional medical educators of our coalition members bring serious and sophisticated experts with deep knowledge of their fields to prepare online learning materials, and also serve as role models to stimulate learners in their career orientation.

Further, the nontraditional educators of the Joint Educators work on online learning platforms that are dedicated to their educational mission and, as we propose in the new exemption wording:

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<sup>4</sup> World Health Organization, Transforming and scaling up health professionals’ education and training 24 (2013).

<sup>5</sup> World Health Organization, Digital education for building health workforce capacity 8 (2020).

<sup>6</sup> *Id* at 10.

<sup>7</sup> *Id* at 13.

a) employ sophisticated digital protection measures, b) limit access of course materials with clips to “registered learners” (students currently enrolled in their courses), c) institute copyright policies, and provide copyright information to educators and preparers of online learning materials, learners, and relevant staff members, and d) work to reasonably prevent unauthorized further dissemination of online learning materials in accessible form to others, including after the registration period ends.

The Joint Educators’ online learning platforms are not designed to entertain, but instead operate for the noble purpose of providing quality educational instruction to enhance the skills sets of learners of all backgrounds and needs. Joint Educators do not want to continue to see a line between the “haves” and “have nots” for high quality, vibrant materials using clips.

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Thank you for the opportunity to participate in this proceeding and to respond to your questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Decherney", with a long, sweeping flourish extending to the right.

Professor Peter Decherney  
On Behalf of the Joint Educators

Professor of English and Cinema & Media Studies, Director of Cinema & Media Studies,  
Faculty Director of the Online Learning Initiative, University of Pennsylvania