

May 4, 2021

Regan A. Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
regans@copyright.gov

Re: Docket No. 2020—11
Exemptions to Prohibition Against Circumvention of Technological Measures Protecting
Copyrighted Works

Dear Register Smith,

Thank you for your letter dated April 16, 2021 following up after the Proposed Class 1 (Audiovisual Works—Criticism and Comment (Education and Noncommercial Videos)) as part of the Copyright Office’s Section 1201 rulemaking proceeding. I appreciate the ability to provide you with written responses to your additional inquiries.

In response to your first inquiry, as to whether the pandemic has created a gap in what would normally be a functioning market for educational licensing of full-length motion pictures, I would point out that this gap in the marketplace pre-existed the pandemic. Indeed, films that are no longer being produced or had limited availability even in the pre-pandemic marketplace were never available in streaming format—and the pandemic greatly exacerbated because professors and students could no longer rely on the Section 110(1) exception to copyright for face-to-face teaching due to the virtual nature of teaching during the pandemic. In fact, I asked my colleagues in media acquisitions to provide me with information about media requests during the pandemic and they noted to me that between Fall, 2020 and Spring, 2021, approximately 25% of all request for media content was not available in streaming format.

To answer your specific questions, however, in sub-section (a) of the first question you inquire as to whether and how licensors of full-length motion pictures for educational purposes have responded to the pandemic’s disruption to education. This question, of course, is best asked of the producers and distributors of motion pictures themselves (and I note that some of them are included in your request for comment). However, I will also do my best to answer this question. First, I would point out that as to the gap that I commented on earlier, there are no streaming video producers to contact because those particular titles are unavailable in the streaming marketplace—hence, the gap. However, when I inquired with our media specialist in acquisitions, I was informed that Kanopy offered the University Library with a 10% percent discount from March through May or possibly July of 2020. I was informed that Swank tried to

offer an academic streaming product, but that it was not affordable. In general, the opinion of our Library is that audio-visual streaming licensors did not do nearly as much as academic publishers to assist with audio-visual streaming during the pandemic.

Your next inquiry in sub-section (b) of the first question is to ask what regulatory language would address any disruption to the educational licensing of full-length motion pictures during the pandemic. This is an excellent question, although I would again note that this gap in licensing was present before the pandemic as well. To that end, this is the language that I would propose the following exemption:

Use of a full movie when a streaming version is not commercially available for educational purposes after conducting a reasonable search for an available license: (A) By college and university faculty and students or kindergarten through twelfth-grade (K–12) educators and students (where the K–12 student is circumventing under the direct supervision of an educator), including of accredited general educational development (GED) programs, for the purpose of criticism, comment, teaching, or scholarship

I appreciate the opportunity to provide further written responses to your inquiries.

Sincerely,

A handwritten signature in cursive script that reads "Sara R. Benson".

Sara R. Benson
Assistant Professor and Copyright Librarian