



ASSOCIATION OF  
RESEARCH LIBRARIES



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## COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON THE PROVISIONAL WORKING DOCUMENT ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS

With the increasing impact of digital technology in education, the Library Copyright Alliance recognizes the continuing need to maintain a balance between rightsholders and the larger public interest in access to information through all media formats.

Exceptions for libraries and educational institutions are not abstract issues in the U.S. or Canada. In the U.S., there are three ongoing copyright cases relating to library uses at educational institutions: Cambridge v. Becker (also known as the Georgia State University case regarding electronic course reserves), Ambrose v. UCLA (dealing with streaming), and Author's Guild v. HathiTrust. And earlier this month, the Canadian Supreme Court held in *Alberta v. Access Canada* that fair dealing applied to classroom use.

To share my experience as a library director in the United States, educational institutions do not pay for the right to screen films in their library collections in classrooms. Libraries do not pay for the right to provide accessible copies of works in their collections to print disabled students. These rights are codified in our copyright law as limitations and exceptions. Some of our library and education exceptions predate the digital era, while others had digital technology in mind. Fortunately, the pre-digital concept of fair use applies well to the digital environment. Contrary to suggestions made earlier this week, fair use is not just a defense. It is a right recognized by the U.S. Supreme Court as one of copyright law's built-in accommodations to the U.S. Constitution's right of freedom of expression.

The argument for licensing digital works for educational uses that already are covered by limitations and exceptions when in analog format emerges from a desire to create secondary markets. That market is predicated on the ability of some entity to pay the monumental costs of licensing a vast number of works. Already unable to afford rising journal prices and to pay for existing services, it is unlikely libraries will find funding to pay license fees for the right to make convenient course compilations of materials they already purchased, to stream video they already purchased, or to index the books already purchased for their collections.

Regarding our experience with technical protection measures, the Librarian of Congress has approved important exemptions from the prohibition on circumvention for the purpose of using film clips in higher education. The exemption has not been extended to elementary or secondary education, and the exemption process is expensive and time consuming.

In summary, the Library Copyright Alliance is encouraged by the discussion of Member States to update, carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws and devise new limitations and exceptions that are appropriate to protect educational and research activities.