

Testimony of  
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on behalf of  
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before  
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“Promotion of Distance Education Through Digital Technologies”

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## Promotion of Distance Education Through Digital Technologies

I am Willia Bowe General Counsel for Encyclopaedia Britannica, Inc. I am testifying on behalf of the Software & Information Industry Association (SIIA) headquartered in the District of Columbia. SIIA is a new trade association formed through a merger of the Software Publishers Association and the Information Industry Association. This trade association represents more than 1400 companies engaged in producing products such as computer software and information content. A majority of these products can, and are, distributed over electronic networks through digital technologies. Thus we are keenly interested in the study the Copyright Office has been mandated to produce pursuant to the Digital Millennium Copyright Act.

The Association believes that the existing legal framework provided by the Copyright Act of 1976, as amended, and case law developed by the courts, is more than adequate to address the needs of distance education in the digital environment. This is most evident in light of the variety of materials that copyright holders already provide over digital networks. For example, the University of Maryland's University College, which testified before you in Washington, provides 60 databases containing copyrighted works through their virtual library holdings. Similarly, in Virginia a consortium of 39 institutions of higher learning have created the Virtual Library of Virginia. This library provides access to a variety of public domain materials and copyrighted works over the Internet.

The members of the Software & Information Industry Association, as stated, are involved in the creation and dissemination of both software and information products in digital form. These activities include providing products for the education and training markets such as the databases described above. Our member companies have an interest in anything that expands the use of these products. The provision of products specifically for distance education programs, and the access to existing copyright holdings, through digital technologies provides a tremendous opportunity to do just that.

I think everyone recognizes that the creation and dissemination of copyrighted materials is accomplished through the investment of substantial monetary and human resources. Much of this investment is expended in understanding and satisfying new market demands. With the advent of digital technologies new markets have arisen that require products in an ever expanding array of formats. In addition, these markets necessitate making these products available through a variety of new means of delivery. These new products run the gamut of repackaged existing materials to products created specifically to take advantage of new means of distribution and instruction. A few of these new means of distribution include compact disks and online access.

### **Nature of Distance Learning**

Distance learning has been around for quite a long time. Here in Chicago, for instance, the University of Chicago has been engaged in distance learning since the

1890s when its Extension Division began expanding educational opportunities through correspondence courses. Since that time distance learning has grown and adapted to new methods and technologies. In the context of the nascent digital environment additional modalities await us. The advent of proprietary networks, and more recently, the ever expanding availability of the Internet, provides educators and others who create copyrighted materials vast opportunities. Educators and the copyright industries are already making good use of this new environment.

Today, a review of the literature provides a vast number of definitions for distance learning. The Instructional Telecommunication Council, an affiliate of the American Association of Community Colleges, defines distance education rather expansively as "the process of extending learning, or delivering instructional resource-sharing opportunities, from one person, classroom, building or site, to another person, classroom, building or site, by using video, audio, computer, multimedia communication, or some combination of these with other traditional delivery methods," to which I would add, such methods as correspondence courses. I think most would essentially agree that distance education bridges the physical distance through the use of technologies such as voice, video, data, and print.

Much of the testimony and consideration has centered on distance learning in the context of K-12 and post-secondary education. What we should not lose sight of is the unique capacity that distance education has in addressing the needs of non-traditional students. These needs encompass not only college coursework, but also lifelong learning needs such as vocational and professional skills development.

One SIIA member, The McGraw-Hill Companies, has a division expressly devoted to the needs of online learners. The Lifelong Learning division encompasses McGraw-Hill OnLine Learning, which provides instruction over the Internet, and NRI, which provides more traditional correspondence course instruction, coupled with online resources.

McGraw-Hill OnLine uses McGraw-Hill's extensive library of textbooks, how-to-manuals, and other copyrighted materials, along with its proprietary course delivery software, to provide course materials and instruction over the Internet. These courses include opportunities to interact with their instructors via e-mail and discussion groups. McGraw-Hill OnLine currently provides more than 20 self-paced business and information technology courses directly to student desktops.

Recognizing that many for profit entities provide distance learning products and services, the Association believes that any exemptions should be based on the nature of the use of the copyrighted materials and not on the nature of the user.

### **Role of Licensing**

In keeping with the dictum necessity is the mother of invention, copyright holders are readily adapting to the digital environment. Part of this adaptation relates to the licensing of rights to copyrighted materials. The Copyright Clearance Center, which

represents many of our members, has created the Electronic Course Content Service. This service provides a convenient means of obtaining permission for inclusion of copyrighted works in digitized formats.

Other companies such as my own--Encyclopaedia Britannica--have concluded contracts with educational institutions directly.

In the previous example of the Virtual Library of Virginia many of the licensors provide rather flexible terms and conditions for the use of the included works of authorship. For example, licensors allow reproduction of digital texts into hard copies. Additionally, they allow small extractions from texts for the creation of derivative works for teaching, research and personal use. The licensors request that permission be sought for more extensive extractions. These terms nicely demonstrate the interplay of exclusive rights and limitations that we all are familiar with.

### **Use of Technology**

Due in large part to the government's investment in the Internet we are confronted with new opportunities. From the Internet platform private sector companies have been able to create complementary technologies to provide distance learning programs through digital technologies. For instance, McGraw-Hill Learning OnLine has produced proprietary software specifically for the delivery of instruction via the Internet.

Most of our member companies that provide instruction online use identification and password systems to restrict access to materials. Some of these companies use these methods in league with digital watermarks and similar technologies to safeguard their products in the downstream. In light of the usual practice of allowing the reproduction of hard copies from digital texts some leakage is probably inevitable.

In protecting copyrighted works technology should only be one component. Similar to the battles surrounding computer viruses, there will always be those attempting to provide means of circumventing technological protections. By coupling technological with sound legal protections rights holders should feel comfortable providing their materials for online use.

### **Conclusion**

In conclusion, I wish to reiterate that the members of SIIA do not believe an exemption from exclusive rights is necessary for distance education to flourish. If we allow the marketplace to develop, the Congress' desire to balance the rights of copyright holders and the public's interest in using these works for distance education, will result.