

VRA Statement for Fair Use Conference, Washington, D.C.

as Presented by Sandra C. Walker, VRA President

On Wednesday, September 21, I represented the Visual Resources Association at the Fair use Conference in Washington, D.C. sponsored by the U.S. Department of Commerce, Working Group on Intellectual Property Rights and the National Information Infrastructure, chaired by Bruce Lehman, U.S. Patent & Trademark Office. Fifty participants representing a variety of groups including library associations, elementary and secondary school associations and university consortiums were invited to this first in a series of meetings to develop guidelines for fair use in the context of the National Information Infrastructure. Each invited participant was allowed 3 minutes to present his or her group's viewpoint regarding issues and principles important to fair use in this context.

Three subcommittees were formed from the invited participants. These subcommittees include a group of library groups, a group of elementary and secondary school representatives, and a group of university associations and consortiums. The Visual Resources Association is included in both the library subcommittee and the university subcommittee allowing us to participate in either or both of these subcommittees. Agendas and meeting summaries will be exchanged among all of the participants regarding work of the three subcommittees.

The VRA Executive Board is discussing our continued participation in the upcoming meetings of the Fair Use Conference's subcommittee meetings. It is expected that the subcommittees will meet at approximately one month intervals in Washington D.C. to try to reach a consensus on development of fair use guidelines. Macie Hall, Johns Hopkins University, will be representing our position at future meetings.

The VRA statement of issues and principles was complimented by a variety of attendees, including representatives from the Association of Research Libraries (ARL) and Ohio Link (a consortium of libraries throughout Ohio). Most of the participants in the Fair use Conference recommended that a second CONTU be held to develop fair use guidelines. The first CONTU developed guidelines for Interlibrary Loan policies on photocopying. Some participants, including the ACLS representative, suggested that no fair use guidelines be developed until we are made aware of the recommended statutory changes in copyright law in the final report from the Working Group on Intellectual Property Rights and the NII. Issues of special concern to most of the participants focused on the debate on transmission as reproduction or copying, on distance learning applications, and on multimedia issues. One glaring lack in the Working Group's draft report was the lack of discussion on possible fair use exemption or statutory changes which would make it possible for non-profit entities such as Recording for the Blind, to make use of newly developed technologies including screen character enhancement and synthesized speech for print disabled persons. This issue will likely be discussed in the subcommittee meetings on fair use guidelines and was noted by Chairman Bruce

Lehman for further discussion prior to the publication of the Working Group's final report.

On Thursday, September 22, I presented a statement describing VRA concerns regarding the draft document at the Public Hearings held also in Washington, D.C. This statement was previously publicized on the VRA Listserve and will be posted again to include additions that were added to the statement after that posting and will be submitted to the VRA Bulletin for publication.

During the Public hearings, the VRA statement was endorsed by ARLIS representative, Al Willis. Also, several other speakers including Bruce Kahin, representing the Interactive Multimedia Association (IMA), and David M. Ostfeld, representing the Institute of Electrical and Electronics Engineers (IEEE) also took issue with the draft document's interpretation of transmission as reproduction or copying.

The VRA Executive Board values input from our membership concerning these issues as we continue our participation in discussion at the national level. We will continue to update the membership with information and our activities

ISSUES WHICH I BELIEVE SHOULD BE ADDRESSED BY THE FAIR USE CONFERENCE

Digital transmission of information, both textual and visual in a networked environment; for either distance learning applications or classroom study and review, and the relationship of the Working Group's proposed definition of digital transmission as making a reproduction or copy. Digital browsing of Online Public Access Catalogs, including those which contain images in relation to the Working Group's proposed definition of digital transmission as making a reproduction or copy Comparison of illustrations for scholarly research or teaching. Present copyright law includes fair use guidelines which are too restrictive for study of art works because pictorial, graphic and sculptural works are excluded from CONTU guidelines and because classroom guidelines limit fair use of illustrations from any one source. This concept is also too limiting in other areas of study and research as the limitation of illustrative material could limit scientific comparison of charts and diagrams; comparison of cultural diversity topics; and illustrative materials which illuminate the study and research of historical topics.

Use of "sequences" of materials for scholarly research and teaching which may now become available through digital transmission such as animation sequences and multimedia sequences which may include video and sound.

Concept of de minimis as test of fair use. In the study of works of art, most museums and/or individuals who hold reproduction rights to art works want the work of art represented in its entirety and not in part. Also, the de minimis concept may be too restrictive for animation sequences and multimedia sequences where if only a part of

these sequences is shown, the content that the author intended may be lost or changed in meaning.

PRINCIPLES THAT SHOULD APPLY TO EDUCATIONAL AND LIBRARY FAIR USE IN THE NII CONTEXT

Materials for which fees are charged should be at a reasonable cost which does not prohibit their use in a nonprofit educational setting

Fair Use Guidelines should include the use of materials in a networked environment for distance learning applications and for study and review in a nonprofit educational setting. This is not to say that mechanisms should not be employed to prevent the wholesale downloading of materials

The de minimis concept should be revised and the exclusion of pictorial, graphic or sculptural materials should be revised to allow more than one illustration for comparative study and review and to allow an even-handed approach to teaching, especially in the study of art works, historical concepts, and cultural diversity.