

VRA Statement for Public Hearings, Washington, D.C.

as Presented by Sandra C.Walker, VRA President,
September 22, 1994

Chairman Lehman, Members of the Working Group, Ladies and Gentlemen:

I am here today, as president of the Visual Resources Association, to comment on the Preliminary draft Document, "Intellectual Property and the National Information Infrastructure," prepared by the Working Group on Intellectual Property Rights. The Visual Resources Association is a group of over 700 professionals located in the United States and 20 foreign countries including slide and photograph curators, film and video librarians, media professionals, photo archivists, slide and microfilm producers, rights and reproduction officials, photographers, art historians, and others concerned with visual materials. As professionals associated, for the most part, with universities and museums which utilize visual resources in education, we are vitally concerned with the issues of copyright and fair use for teaching and scholarly research.

While I believe this document is an excellent summary of existing copyright law applicable in the United States, I think the Working Group has not fully considered the implications of networking as it relates to class use by non-profit educational institutions. I am also speaking in particular about distance learning applications as opposed to traditional face-to-face classroom situations. There is no exploration of how networked materials might be handled, in relation to fair use guidelines, and whether this type of use might even be considered to be fair use. Public performance, distribution, and the first sale doctrine are mentioned, but not in relation to applications by non-profit organizations in a networked environment. As an example of how materials might be used in a networked environment for distance learning, an art history professor physically located in a university might wish to provide images of art works and related text to students physically located at other sites. Will this use of the information infrastructure be construed as fair use or copyright infringement?

I feel that more attention needs to be devoted to implications of utilizing still and moving images as well as sound (described as phonorecords in the draft document) in so called multimedia. As noted in the draft document, the term "multimedia" has different meaning in copyright law than the term has for educators and consumers. Educators and consumers generally accept multimedia to designate digital (and/or analog) materials from a variety of sources that may include sound and still and motion images linked together via computer interfaces that allow the user to utilize the multimedia program in a sequential or non-sequential way. In some cases, it is technologically possible to download images and/or text from so-called multimedia productions and create new multimedia productions or derivative works. Does this type of use by non-profit educational institutions fall within fair use guidelines? How is its usage effected by public performance rights or first sale doctrine? How

will usage and derivation be monitored and controlled to protect intellectual property rights?

Comparison of illustrations for scholarly research and teaching which are becoming available via the National Information Infrastructure needs to be considered. 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 to one illustration 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 a scientific comparison of charts and diagrams; comparison of cultural diversity topics; and illustrative materials which illuminate the study and research of historical topics. Comparative study and research fosters even-handed teaching rather than the promulgation of biased viewpoints.

As described in the preliminary draft document, electronic transmission via the National Information Infrastructure, or indeed the Global Information Infrastructure, constitutes a copy or reproduction of the work transmitted as the information resides digitally within the user's computer. How does this definition of transmission, and the subsequent copy, affect usage of materials in non-profit educational institutions for teaching and scholarly research? As a pertinent analogy, if teachers wish to utilize a videotape in their classroom, the institution should purchase a copy of the videotape. When the videotape has been shown enough times to degrade the image quality another copy must be purchased. When an institutional representative such as a librarian, receives a computer transmission, and therefore a copy according to the draft document definition, of visual images and/or text, the digital quality of the image is retained and conceivably could be used indefinitely for teaching and scholarly research. How will this type of usage affect intellectual property rights and fair use guidelines?

Both Vice President Gore, in his speech in Buenos Aires in March, 1994, and Secretary of Commerce Brown, in his New York City speech in April, 1994, mentioned as one of the goals for the year 2,000 "to connect every classroom, library, hospital and clinic in the United States to the information highways; to connect every school and library in the world to the Internet, thus creating a Global Digital Library." (Federal Register) If the definition of digital transmission constituting a reproduction or copy is allowed to stand, then these libraries and schools run the risk of infringing copyright when patrons browse the information, whether text or visual, that is becoming available in the Global Digital Library. This definition will also inhibit scholarly research and discussion in classrooms rather than the technology bringing images and information to classrooms that were heretofore available only to students who travel to museums and other sites where the original art works are located.

As professionals associated for the most part with universities and museums, the Visual Resources Association is concerned with affordability of the information

(whether textual or visual) which will become available on the National Information Infrastructure. We agree with the statement in the draft that "...some reasonable approach must be adopted to ensure that the economically disadvantaged in this country are not further disadvantaged or disenfranchised by the information revolution. Public libraries and schools, and the access to information that they provide, have been important safeguards against this nation becoming a nation of information 'haves' and 'have nots.' We must ensure that they continue to be able to assume that role." (p.133) I would add that the members of our organization believe that compensation for intellectual property rights (i.e. royalty fees etc.) should not prohibit the use of visual or textual materials for teaching and scholarly research. Fair Use guidelines and/or statutory changes to copyright law must be enacted to encourage, rather than limit, the development of Online Public Access Catalogs and dissemination of information for scholarly research and teaching in nonprofit educational institutions. While most of our membership is located in institutional libraries or departments which specialize in images of art works, visual images are not limited to art classes, but may also be used in history classes, English literature classes, anthropology classes, classes exploring cultural diversity and others. We feel that information on the National Information Infrastructure, whether visual images or text, should be available to benefit the broadest spectrum rather than an elite group of users.

I appreciate the opportunity to comment on the draft document prepared by the Working Group on Intellectual Property Rights and look forward to more information from this group.