

Congress of the United States

Washington, DC 20515

WILL FAIR USE SURVIVE? FREE EXPRESSION IN THE AGE OF COPYRIGHT CONTROL

December 15, 2005

Dear Colleague:

We write to bring to your attention a policy report just published by the Brennan Center for Justice at the NYU School of Law. *Will Fair Use Survive? Free Expression in the Age of Copyright Control* by Marjorie Heins and Tricia Beckles and available at <http://www.brennancenter.org/programs/downloads/Will%20Fair%20Use%20Survive.pdf> highlights an alarming rise in threats to fair use and other safeguards of free expression.

The report explains how and why fair use is a crucial part of our copyright law. It describes why fair use should not be viewed as a defense of last resort but as a critical protection upheld by the principles of free speech.

Although copyright matters are in the news every day – from battles over online file sharing to efforts to convince other nations to crack down on the distribution of pirated works – threats to fair use, which present a major challenge to cultural freedom and democratic discussion, are seriously underreported. *Will Fair Use Survive?* documents the chilling effects created by often unjustified cease and desist letters, take down notices from copyright holders to Internet service providers and a culture wedded to rights clearance that ignores fair use. It is particularly useful because it highlights how fair use limitations are affecting newer mediums like the Internet.

As the report concludes:


The free expression safeguards in intellectual property law are essential to creativity, culture, and democracy. They are particularly critical today, when the term of copyright control often lasts for well over a century. We hope this report will spark discussion, activism, community support, and policy reform. Although other approaches are welcome and desirable, fair use must be strengthened, not abandoned.

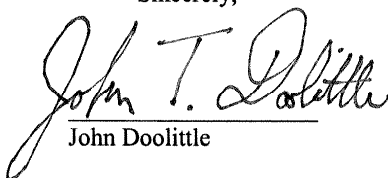
We commend *Will Fair Use Survive? Free Expression in the Age of Copyright Control* to you and urge you to join with us in protecting and preserving the essential principle of fair use. To assure the fair use rights of digital media consumers, we have offered H.R. 1201, the Digital Media Consumers' Rights Act, and H.R. 4536, the Benefit Authors without Limiting Advancement or Net Consumer Expectations (BALANCE) Act. Our measure seeks to restore balance in our nation's copyright laws in ways that will promote technological innovation and consumer freedom, while at the same time ensuring that record companies, movie studios and book producers can stop pirates from stealing.

Unfortunately, as a result of the enactment of the Digital Millennium Copyright Act of 1998, powerful media companies were given the legal tools to restrict and prevent altogether the fair use of digital media. H.R. 1201 corrects that mistake by allowing the purchasers of digital media to bypass a technological protection measure to gain access to a copyrighted work for noninfringing purposes, such as the exercise of fair use rights. H.R. 4536 contains similar provisions and makes clear that consumers' rights include archiving their digital works as well as performance or display of their digital works on personal digital devices. In short, if a consumer is entitled to make fair use of a copyrighted work, he may also bypass technical protection measures in order to make that fair use. At stake is the very survival of fair use as applied to digital works.

For more information on the report or to become a cosponsor of H.R. 1201 and H.R. 4536, please contact Amy Levine (Rep. Boucher, x53861), Evan Goitein (Rep. Doolittle, x52511) or Praveen Goyal (Rep. Lofgren, x53072).

Sincerely,


Rick Boucher


John Doolittle


Zoe Lofgren