

Copyright permeates so many areas of academic librarianship. That's one of the reasons ALA and the Policy Corps take an active role in advocating on behalf of academic library users on the Hill as new copyright legislation is developed.<sup>1</sup> We encourage readers to keep an eye on this column in 2022 for updates on legislation related to copyright and intellectual property.

## The CASE Act

The Copyright Alternative in Small-Claims Enforcement Act of 2020, also known as the CASE Act, is a new law establishing a small claims system within the U.S. Copyright Office (USCO).<sup>2</sup> Through this system, rightsholders will be able to bring claims of infringement against a party and, if they are found guilty of infringement, may receive up to \$30,000 in compensation for the unlawful use of their copyrighted works. Three officers, appointed by the Register of Copyrights, will sit on the Copyright Claims Board (CCB) and review claims and make determinations regarding alleged infringement. While the system is described in the law as “voluntary,” it requires those who have claims brought against them to opt out of proceedings in a timely manner or face a default judgment, with limited options for appeal.

USCO spent much of 2021 establishing CCB by appointing officers<sup>3</sup> and rulemaking, including soliciting comments from the public on procedures for libraries and archives to opt out of CASE Act proceedings.<sup>4</sup> It appears that CCB will begin processing claims in spring 2022. Readers are encouraged to stay abreast of developments related to the CASE Act and can do so by visiting USCO's website; seeking out information, webinars, and conference sessions by organizations such as ACRL, ALA, and the Association of Research Libraries (including a forthcoming C&RL News piece on the CASE Act by the authors of this update); and by reading through the statute to familiarize themselves with the law.<sup>5</sup>

## DMCA 1201 exemptions

In October 2021, the Library of Congress, acting on guidance from the Copyright Office, completed their eighth triennial rulemaking concerning exemptions to Section 1201 of the Digital Millennium Copyright Act (DMCA).<sup>6</sup> The exemptions permit particular users to circumvent technological protection measures that control access to copyrighted works for specific purposes. A few of these recent exemptions benefit college and research libraries and their users, including for the preservation of DVDs and to conduct text data mining on the contents of ebooks and DVDs.

Congress enacted DMCA in 1998, which made it illegal to crack digital rights management (DRM) on copyrighted works to access or use the underlying content. The problem with this part of DMCA is that criminalizing the circumvention of DRM preemptively shuts down users from exercising their rights under limitations and exceptions to copyright. For example, if a college

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instructor wishes to include a snippet of a film in their course lecture, they could be prevented from doing so if the source content is protected by DRM, even if their use was covered by fair use.

However, every three years, the Copyright Office asks for users to submit categories of exemptions to the default rules under Section 1201 of DMCA. In the most recent rulemaking, two new exemptions pertaining to academic libraries were granted. It is now permissible for libraries, museums, and archives to get around the DRM on DVDs held in their collections for the purpose of preservation.

Another exemption permits the circumvention of technological protection measures applied to motion pictures (DVDs) and literary works (ebooks) for the purposes of text data mining. Text data mining, or TDM, typically involves the use of automated techniques and algorithms to extract information from large sets of unstructured or thinly structured digital content, such as a corpus of scholarly texts. TDM is an increasingly popular research methodology used to examine big data sets where it would otherwise be impossible for a researcher to read each input separately. For this exemption to apply, the circumvention needs to be conducted by a researcher at a nonprofit institution of higher education; the copy of each motion picture or ebook has to be lawfully acquired and owned by the institution; the person cracking the DRM must only view the contents for the purposes of verifying the TDM research results; and the institution has to apply effective security measures to prevent downloading or dissemination of the copyrighted materials.

## Public domain

As with every recent new year, January 1, 2022, gave us cause to celebrate Public Domain Day, the day when tens of thousands of works enter the public domain because their copyright term has expired. When creativity is in the public domain, it may be used without restriction, permission, or payment. This year marked the entrance into the public domain of such works as Winnie-the-Pooh by A. A. Milne with illustrations by Ernest H. Shepard and *The Sun Also Rises* by Ernest Hemingway.<sup>7</sup> This year was especially important because the Music Modernization Act effectuated the public domain status of all pre-1923 recorded music on January 1, 2022. The Internet Archive hosts a trove of more than 38,000 records online for the public to enjoy.<sup>8</sup>

## Notes

1. Launched in 2017-28 in partnership with APA President Jim Neal, members of ALA's Policy Corps assist ALA leadership in advocating on behalf of libraries and their users on legislation and policy development. Readers can learn more by visiting this website: <https://www.ala.org/advocacy/ala-policy-corps>.

2. The text of this legislation can be found online at <https://www.congress.gov/bill/116th-congress/house-bill/2426/text>.

3. Profiles of the CCB officers can be found in this press release put forth by the USCO: <https://www.copyright.gov/newsnet/2021/906.html>.

4. Through rulemaking, federal regulations are developed by agencies of the U.S. federal government. Information about the rulemaking process related to the CASE Act can be found by visiting this website: <https://www.copyright.gov/about/small-claims/related-rulemakings.html>. Readers should closely follow the rulemaking for Small Claims Procedures for Library and Archives Opt-Outs and Class Actions, and can look for the final rule to be published

on this webpage: <https://www.copyright.gov/rulemaking/case-act-implementation/library-opt-out/>.

5. The website for the CCB can be found online at <https://www.copyright.gov/about/small-claims/>. Readers can find Chapter 15 of US copyright law (Title 17, US Code) by following this link: <https://www.copyright.gov/title17/92chap15.html>.

6. The text of this DMCA can be found in this document: <https://www.govinfo.gov/content/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf>. Information on the Eighth Triennial Section 1201 Proceedings, including the Registrar of Copyright's final rule can be found via this website: <https://www.copyright.gov/1201/2021/>.

7. Duke University's Center for the Study of the Public Domain highlights works that pass into the public domain each year on January 1: <https://web.law.duke.edu/cspd/publicdomainday/2022/>.

8. A useful article on the Music Modernization Act by Eric Harbeson, written while he was working for the American Music Research center at the University of Colorado Boulder, can be found here: <https://scholar.colorado.edu/concern/articles/w6634438s>. Records made available as part of the Great 78 Project can be accessed online at <http://great78.archive.org/>. *~*