

Possible revision to Copyright Act

In spring 2005, the U.S. Copyright Office and the Library of Congress formed a study group to investigate whether Section 108 of the Copyright Act should be updated, considering the increasing use of digital technologies and network-based resources. Thus far, the study group has focused on access to digital copies and two new exemptions addressing preservation-only copies and Web site harvesting.

ALA and the Association of Research Libraries (ARL) convened a meeting of digital preservation librarians as well as representatives from other library, museum, and archival associations to discuss these proposals in depth and develop a white paper that represents the library, museum, and archive stance on Section 108. The white paper *The Libraries Position on Access and Digital Preservation: A Response to the Section 108 Study Group* is now available on the ALA Washington Office's Copyright page (www.ala.org/ala/washoff/WOissues/copyrightb/copyright.htm), and ALA welcomes any additional feedback on the document from its members.

Section 108 provides for libraries and archives to make reproductions of copyrighted works, under certain conditions, without seeking permission from the copyright holder. For example, libraries may photocopy journal articles and send these copies to other libraries through interlibrary loan. This section also allows libraries to make copies for preservation and replacement purposes.

With the rapid growth of modern technologies, including the rise of the Internet and the spread of digitization, potential modification to Section 108 could include:

Provisions for preserving documents and Web sites that were created in digital form or born digital ;

New parameters for off-site access to digital replacement copies;

Provisions for making replacement or preservation copies of items that are at risk ;

Revisiting the scope of institutions eligible for Section 108 exceptions.

While these issues are of the utmost importance, ALA and ARL, after their in-depth meeting with experts, do not believe that significant changes to the Section 108 statute are necessary at this time. It is true that technological innovation is driving changes in institutional roles and the development of new practices and standards. But, given the pace and breadth of change and what is at stake, ALA and ARL believe the best approach to be the reaffirmation of the fundamental rights and responsibilities of libraries; i.e., to preserve and provide access to the evolving cultural and intellectual record and to provide a legal environment that enables the development of professional and institutional practices necessary to accomplish this mission on behalf of society.

Further, should Congress determine that such changes to Section 108 *are* necessary, ALA and ARL note that experience has shown that flexibility in copyright law is critical, especially in a time of rapid technological and organizational change.

With that in mind, ALA and ARL are recommending caution in the revision of Section 108. The potential for making mistakes in these early days of network-based resources is high. In summary, their recommendations are:

eliminate the three-copy limit currently part of the preservation and replacement exemptions and replace it with the language a limited number of copies as reasonably necessary for the permitted purposes, and

enable remote access to digital preservation and replacement copies with minimal restrictions that match the terms and conditions that existed when the original copies were acquired.

If you have feedback you would like to provide regarding the ALA/ARL white paper, please contact Carrie Russell, ALA copyright specialist, at crussell@alawash.org. *zz*

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