

Copyright review hits closer to home

Although Congress has been out of session, the library copyright policy and lobbying coalition has continued its advocacy for fair, balanced copyright laws. In July, the Library Copyright Alliance (LCA)—consisting of ALA, ACRL, and the Association of Research Libraries—met with the U.S. Copyright Office to voice opposition to changes to Section 108 of the Copyright Act (the “library exception”). Any changes to the law could shift the delicate balance of copyright law and favor one industry over another.

Many industries, including entertainment and Internet companies, as well as libraries, are involved in copyright policy, but reaching consensus among these stakeholders is a highly political process. Tighter control over fair use, for example, would provide additional revenue streams to rights holders, but would also, in libraries’ view, hamper innovation, the creation of new works, and learning. The Copyright Office has historically favored the interests of authors and rights holders, so any recommendation the Copyright Office endorses concerning Section 108 is likely troublesome. Although the beneficiaries of the provision—libraries and archives themselves—have expressed objections to its revision, the Copyright Office wants to proceed with changes.

In June, the Copyright Office issued a Notice of Inquiry asking that anyone who had any other information to share regarding Section 108 reform make a private appointment with the Copyright Office in Washington, D.C. LCA and others vocifer-

ously objected to the requirement because the process lacked transparency and placed an unreasonable burden on concerned citizens by asking them to travel to Washington, D.C. The objections prompted the Copyright Office to accept meetings via phone calls and publish the names of those who met with them. However, the Copyright Office still refuses to provide a public record of what was discussed.

Despite the fact that Congress will refuse to take up any legislation without broad consensus among the parties, especially given the upcoming elections, the Copyright Office has already drafted legislation that they hope will be introduced by a sympathetic legislator this fall. The Office’s proposed revisions to Section 108 are expected to include measures that mirror proposals by publishers and authors: extended collective license fees for digitization and e-reserves; prerequisites necessary before archiving a website (much like the prerequisites required before using lawfully acquired works in distance education as seen in The Teach Act); and waiving sovereign immunity before exercising an exception so it will be more profitable to sue a school, university, or library.

What do libraries want out of a new Section 108? For LCA, contract pre-emption seems to be the ultimate solution. Since nearly all library digital resources are acquired through license agreements, license agreements should not circumvent the library and user rights we have in the copyright law, such as those in Section 108.

If the legislation proposed by the Copyright Office is as bad as we suspect, LCA will prepare librarians to contact their Congressional representatives to express their concerns. *✍*

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