



BEFORE THE UNITED STATES COPYRIGHT OFFICE

COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON

MANDATORY DEPOSIT OF ELECTRONIC BOOKS AND SOUND RECORDINGS

AVAILABLE ONLY ONLINE

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel. An estimated 200 million Americans use these libraries more than two billion times each year.

LCA welcomes the opportunity to submit comments regarding the “Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online.” These comments describe the importance of deposit in ensuring that the Library of Congress (Library) continues to build and preserve a national collection of works. These comments also discuss the public access of works collected by the Library through mandatory deposit requirements.

Background

In January 2010 the Copyright Office implemented an interim rule regarding the mandatory deposit of electronic works not available in a physical format, which previously had been exempted from the mandatory deposit rules. This interim rule for “online-only works” applies essentially to electronic serials: “periodicals, newspapers, annuals, and the journals, proceedings, transactions, and other publications of societies” without a physical counterpart. Deposit under the interim rule is only required when the Register of Copyrights specifically demands a copy of the serial for the Library. The interim rule also governs public access to these deposited works, limiting the number of users to two simultaneous authorized persons who may

access the works via secured servers over a secured network at its facility or remote location. In practice, these works are viewable only at two secure terminals located in the Library's Jefferson Building. Users may view accessed works at these secured terminals and may print an article, but cannot save or download a copy.

The Library of Congress now seeks to expand this interim rule beyond electronic serials to also apply to online-only books and sound recordings.

Rule Should be Expanded to Online-Only Books and Sound Recordings

LCA supports extending on-demand deposit requirements to online-only books and sound recordings because of the critical role of deposit in building the Library's collection and ensuring long-term preservation of these works. The rule would apply narrowly: covering works available only online, not those also produced in physical form.

The Library's initiative to preserve and provide access to content is extremely important as it continues to build a national library for the United States that encompasses all types of works, including those that are available only in electronic form. While the digital age allows for rapid publication of content, much of this content is inherently ephemeral and easily lost without proper stewardship. The Library's interest in collecting and preserving all types of works produced today, and its codified ability to do so, will ensure that future generations of users—scholars, scientists, legislators, students and simply curious individuals alike—will be able to access these materials.

Without mandatory deposit, works created in the digital age could be lost forever. We have seen this loss happen in the film industry. Approximately half of all films made before 1950, and most silent films, are unavailable because no effective mechanism existed at the national level to preserve these important pieces of our cultural heritage and history. The Library

is actively and commendably trying to ensure that such enormous permanent losses are not replicated in the digital era. Mandatory deposit of online-only works is the necessary and appropriate solution. Although the present Notice of Inquiry presents only the issue of extending the interim rule to online-only books and sound recordings, serious consideration also should be given to applying the rule to other categories of works, such as photographs and films, to ensure that all types of works are adequately preserved and included in our national Library.

The present Notice of Inquiry suggests that online-only books and sound recordings differ from the online-only serials covered by the interim rule because books or sound recordings “are available not only via subscription services, but also for purchase and download.” This suggestion fails to take into account the reality of “purchase” of many digital works. Often, digital works are made available through an end user license agreement that permits access, but not downloads or copies, or imposes other limitations. Moreover, even if the work is available for download, the file may be protected in a manner that threatens the Library’s preservation goals. Additionally, the Notice of Inquiry ignores the fact that the Library has long collected and preserved works through mandatory deposit without requiring the Library to purchase these items. The Library should be able to collect and preserve these works in the same manner as it has collected hard-copy formats, ensuring the preservation of our cultural heritage regardless of the format in which they are published.

Many of the same concerns regarding online-only serials exist with respect to online-only books and sound recordings. Requiring mandatory deposit upon request will thus ensure that the Library can continue to fulfill its responsibility to build and preserve a robust national collection comprised of all kinds of works.

To that end, regulations regarding deposit should require that the deposited format be consistent with the needs of the Library, including requirements that rights metadata be incorporated in the deposited material. Rights metadata is an essential component for properly curating the work, ensuring its usefulness in the Library's collection, and facilitating compliance with copyright law.

Greater Public Access to Collected Works is Essential to Library's Mission

Providing access to works collected through mandatory deposit is a key aspect of the Library's objective of serving the nation by providing access to our cultural heritage and information. It is therefore essential that the Library continue to be able to serve users by providing access to all types of materials.

LCA notes, however, that limiting simultaneous access to two on-site users at dedicated terminals is too restrictive and not in accord with current practices in the library community. Access is an essential component of the Library's mission and such a limited policy hampers the spread of knowledge and culture. Extension of the applicability of the interim rule should involve reconsideration of the current, overly conservative limitation of accessing materials to two on-site terminals at the Library.

Online Access Should Be Allowed as Improved Security Minimizes Harm to Rightsholders

The Library is well-equipped to receive, store and regulate access to any online-only materials collected under mandatory deposit regulations. Digital security is more advanced today than at the time the current interim rule was considered. Numerous institutions, such as Google and HathiTrust, hold enormous volumes of digital files in their collections and are adequately protected by security measures. Indeed, as the Second Circuit confirmed, that with the type of security measures put in place to protect, for example, HathiTrust's digital collections, rendered

the risk of harm to rightsholders minimal. When the Library implements its much needed digital infrastructure, it is even more unlikely that the Library's digital collection would be subject to the type of security breach that would result in irreparable harm to rightsholders.

Additionally, the Library's current practice of allowing patrons to listen to digitized versions of sound recordings in the Madison Building from materials located on a server at the Packard Campus of the National Audio-Visual Conservation Center of the Library located in Culpepper, Virginia should continue to be permitted. The Packard campus is part of the Library's facilities and connecting the campuses through a cable network to facilitate access to users at the Capitol Hill facilities does not implicate copyright concerns or pose significant additional security risks. Access to these important materials in this present, secure manner facilitates the Library's goals of promoting access to works.

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