



January 22, 2015

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
Subcommittee on Communications and Technology

The Honorable Anna G. Eshoo
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications and Technology

Dear Chairman Walden and Ranking Member Eshoo,

As representatives of libraries, we appreciate the Subcommittee's interest in net neutrality and February 21, 2015 hearing on "Protecting the Internet and Consumers Through Congressional Action." Libraries of all types—academic, research, public and school libraries—depend on the open Internet to carry out their missions and ensure the protection of freedom of speech and life long learning.

As the Subcommittee considers addressing the issue of net neutrality and preserving the open character of the Internet, we ask that it carefully consider the potential impacts that legislation will have on copyright law and practice. A balanced copyright system is essential to the missions of our organizations and any legislation to preserve the open character of the Internet should avoid upsetting this balance.

In particular, we ask the Subcommittee to evaluate the potential impacts of the language referencing copyright in the legislative discussion draft released on February 16, 2015. Section 13(c)(2) of the draft states that "nothing in this section . . . prohibits reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity."

We have concerns that this language could be interpreted in ways that upset well-established copyright principles. The language has the potential to conflate the issues of net neutrality and copyright and allow copyright holders to enforce their claims outside the established channels of enforcement. This language could be used as a "loophole" around ensuring net neutrality by circumventing the bans against blocking or paid prioritization that the bill is intended to address. Internet service providers could potentially use Section 13(c)(2) as a pretext to block or throttle sites under the theory, grounded or not, that a site may include works that infringe copyright. Copyright holders could use this language to essentially enforce their copyrights, even if their claims are misleading or false.

We urge the Subcommittee to carefully examine the potential impacts of this language and ensure that any legislation to address net neutrality focuses solely on the issue of preserving the open Internet. Representatives of the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries would be happy to meet to discuss this issue further.

Sincerely,

Krista L. Cox

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Director of Public Policy Initiatives, Association of Research Libraries

On behalf of the Library Copyright Alliance: 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.