



STATEMENT OF THE LIBRARY COPYRIGHT ALLIANCE ON THE COPYRIGHT OFFICE'S NOTICE OF INQUIRY CONCERNING SECTION 108 OF THE COPYRIGHT ACT

The Library Copyright Alliance (LCA) consists of the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries. On May 8, 2015, LCA provided the House Committee on the Judiciary with recommendations on copyright reform. In that document, LCA specifically urged Congress *not* to address Section 108 of the Copyright Act, which provides exceptions for libraries and archives:

We oppose an effort to overhaul Section 108 for four reasons. First, although Section 108 may reflect a pre-digital environment, it is not obsolete. It provides libraries and archives with important certainty with respect to the activities it covers. Second, as the recent decision in *Authors Guild v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014), makes clear, fair use supplements Section 108 and thus provides a sufficient mechanism for updating it when necessary. For example, fair use provides a sufficient basis for website archiving. Third, amending Section 108 could have the effect of limiting what libraries do today. Again using website archiving as an example, the Library of Congress's Section 108 Study Group proposed a complex regulatory scheme for website archiving, an activity already routinely performed by libraries as well as commercial search engines. Indeed, some rights holders see the updating of Section 108 as an opportunity to repeal the fair use safe harbor in Section 108(f)(4) and restrict the availability of fair use to libraries. Fourth, based on the highly contentious and protracted deliberations of the Section 108 Study Group, it is clear that any legislative process concerning Section 108 would be equally contentious and would demand many library resources just to maintain the status quo, let alone improve the situation of libraries. A Section 108 reform process would consume significant Congressional resources as well. Accordingly, we urge the Committee to leave Section 108 as is.

LCA continues to oppose any effort to revise Section 108 for these reasons. Notwithstanding our clear objection on behalf of the institutions for which Section 108 was written, the Copyright Office in its June 7, 2016, notice of inquiry states that is seeking "to finalize its legislative recommendation" concerning a "re-drafting" of Section 108. Thus, to protect the interests of libraries, LCA intends to meet with the Copyright Office to provide its views on all the substantive issues listed in the notice of inquiry.

Additionally, LCA is concerned about the lack of transparency relating to this inquiry. LCA expects the Copyright Office to publish a list of the interested parties it meets in the course of this inquiry as well as a detailed summary of what each of these parties advised.

Finally, we believe there are other sections of the Copyright Act in greater need of reform, most notably Section 504(c)(2) concerning statutory damages. Amendment of Section 504(c)(2) would benefit libraries and the public at large, including creators.

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