



**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY AND THE  
INTERNET**

**HEARING ON SECTION 512 OF THE DIGITAL MILLENNIUM COPYRIGHT  
ACT**

**STATEMENT 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. In this statement, LCA explains the importance to libraries of the safe harbors provided by Section 512 of the Digital Millennium Copyright Act (DMCA).

**I. Internet Access**

As the subcommittee reviews the DMCA’s Section 512(a) safe harbor for “mere conduits,” it must bear in mind that not only large commercial entities such as Verizon and AT&T act as service providers within the meaning of Section 512(k)(1)(A). Libraries play this role as well. In the United States, we don’t have Internet cafes that provide users with the hardware necessary for Internet access. While Starbucks has Wi-Fi, it doesn’t supply laptops. And although increasingly more Americans at all income levels own smart phones, it is difficult (if not impossible) to fill out an online job application, or

apply for healthcare, on a smart phone. Libraries are the only source for free Internet connectivity and Internet-ready computer terminals for most Americans.

Public libraries provide the public with access to over 240,000 Internet-ready computer terminals.<sup>1</sup> In 2010, there were 367 million user-sessions on these computers. There were 234 computer uses per 1,000 visits to public libraries. Public libraries in rural areas had the highest ratio of Internet accessible computers: 6.1 computers per 5,000 people.

A 2013 survey by the Pew Internet and American Life Project found that 66% of those who used the Internet at a library in the past 12 months did research for school or work; 47% say they got health information; 41% say they visited government websites or got information about government services; 36% say they looked for jobs or applied for jobs online; 16% say they paid bills or did online banking and 16% say they took an online class or completed an online certification program.<sup>2</sup>

A study performed by the Information School of the University of Washington for the Institute of Museum and Library Services demonstrated the importance of the Internet access provided by public libraries to people below near or below the poverty line. The study found that in 2009, over 77 million people accessed the Internet from public libraries in the United States.<sup>3</sup> Forty-four percent of people below the poverty line used

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<sup>1</sup> Institute of Museum and Library Services, *Public Libraries in the United States Survey, Fiscal Year 2010* (2013), <http://www.ims.gov/assets/1/AssetManager/PLS2010.pdf>.

<sup>2</sup> Pew Internet & American Life Project, *Library Services in the Digital Age* (2013), <http://libraries.pewinternet.org/2013/01/22/Library-services/>

<sup>3</sup> Samantha Becker, *Opportunity for All: How the American Public Benefits from Internet Access at U.S. Libraries 2* (2010), <http://www.ims.gov/pdf/OpportunityForAll.pdf>.

library computers for Internet access and other services. Among young adults below the poverty line, the level of usage increased to 61%.<sup>4</sup>

A 2012 study on the economic benefit of Texas public libraries found that Internet access via library computer terminals saved users over \$300 million in 2011.<sup>5</sup> The Wi-Fi provided by the Texas libraries saved users over another \$20 million. 62% of the Texas library directors said that the Internet access was “extremely beneficial” to users, while a further 20% indicated that it was “quite beneficial.” 56% of the directors said that Internet access was the single most important resource provided by their libraries. The users’ online activities included: performing homework for classes from grade school to college; taking continuing education courses; training and testing for job certifications and licenses; looking, and applying for, jobs; applying for unemployment benefits and social assistance; applying for disaster aid as well as finding family during and after natural disasters; working short –term, paid online jobs; developing and operating businesses by placing and receiving orders; researching price comparisons; market new products; using online banking; and filing taxes. Numerous library directors indicated that some users were running small businesses entirely via Internet at their library.

The Texas directors noted that even users with home Internet access use the library Internet access because of its greater bandwidth and faster service. Additionally, not all users have the option of Internet access at their residence. “Ranchers and others in rural area in particular have difficulty obtaining reliable and reasonably priced Internet at their residences.” Further, numerous directors reported that users with laptops accessed

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<sup>4</sup> *Id.* at 5-8.

<sup>5</sup> Bureau of Business Research, IC2 Institute, University of Texas at Austin, *Texas Public Libraries: Economic Benefits and Return on Investment*, 2012, at 39-42.

their libraries' wireless service after normal hours; they cited examples of users parking near the library when the library was closed to access an Internet connection.

Lack of connection is more than a rural issue. A study of the public libraries in New York City found that 2.9 million residents don't have broadband access at home.<sup>6</sup> Thus, between 2002 and 2011, the libraries have increased their total number of public access computers by 89%. Between 2007 and 2011, the number of computer session logged at public computers in the city's libraries grew by 62%, from 5.8 million sessions in 2007 to over 9.3 million sessions in 2011.

Community college libraries also provide Internet access to underserved populations. Nearly 31% of students at two-year colleges do not own desktop computers or full size laptops, and thus often rely upon their college libraries for Internet access and other information technology needs.<sup>7</sup>

The Section 512(a) safe harbor for "mere conduits" has enabled libraries to provide Internet access without the specter of liability for onerous copyright damages because of infringing user activity. Any alteration of the DMCA's framework, either directly by amendment of 17 U.S.C. § 512(a) or indirectly by imposition of new obligations on Internet access providers, could have an adverse effect on the ability of libraries of all types to deliver a critical service to underserved and other user communities.<sup>8</sup>

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<sup>6</sup> Center for the Urban Future, *Branches of Opportunity*, 2013, at 6.

<sup>7</sup> EDUCAUSE, *Core Data Service Fiscal Year 2009 Summary Report 34* (2009) <http://net.educause.edu/apps/coredata/reports/2009/>.

<sup>8</sup> At many colleges and universities, the libraries participate in the administration of campus-wide Internet access services. Under the Higher Education Opportunity Act, educational institutions have significantly more obligations to address copyright

## **II. Information Location Tools**

Libraries also rely on the Section 512(d) safe harbor for information location tools. Librarians prepare directories that provide users with hyperlinks to websites the librarians conclude in their professional judgment to contain useful information. Section 512(d) shelters a library from liability if the website linked to, unbeknownst to the library, contains infringing material.

One amendment would make this safe harbor even more useful to libraries. Currently, this safe harbor appears to be available only if the library, in compliance with Section 512(c)(2), identifies on its website an agent to receive notifications of claimed infringement, and provides the Copyright Office with the agent's contact information. While the identification of the agent on the library's website makes sense, the requirement of providing the Copyright Office with the agent's contact information is a completely unnecessary bureaucratic burden. The Copyright Office's directory of agents serves no purpose. If the rights holder wants to notify the library's agent about infringing activity, the agent's contact information can be found directly on the library's website. There would be no reason for the rights holder to consult the Copyright Office's directory of agents. This requirement's only accomplishment is making it more difficult for website operators to qualify for the Section 512(c) and (d) safe harbors. Accordingly, it should be repealed.

## **III. First Amendment Concerns**

Although the DMCA safe harbors have been extremely helpful to libraries in fulfilling their mission of providing their users with access to information, in some cases

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infringement by subscribers than do commercial Internet service providers. *See* <http://www.educause.edu/library/higher-education-opportunity-act-heoa>.

rights holders have abused the notice-and-takedown framework to target critical speech or restrict the fair use right.<sup>9</sup> We understand that other entities will provide the Subcommittee with a more detailed discussion of these abuses and possible solutions. We share these concerns about these abuses.

Moreover, some rights holders provide libraries with incomplete takedown notices, and then do not respond to requests for additional information. At that point, the library must make the difficult decision of whether the notice “fails to substantially comply” with the provisions of section 512(c)(3)(A) so that the library would remain within the safe harbor without taking further action. In other words, some rights holders are not doing their part within the safe harbor framework, and this imposes additional burdens on libraries.

Additionally, the safe harbors can incentivize service providers to “over-comply” with the law. A service provider can retain its safe harbor only if it has adopted and implemented a policy for the termination of the accounts of repeat infringers. Section 512(i)(1)(A). To ensure that they comply with this repeat infringer requirement, some companies that provide Internet access to libraries that serve thousands of users have threatened to terminate service to the library because one user allegedly engaged in infringing activity. In essence, these companies have adopted a “one strike and you’re out” policy: a result we believe Congress did not intend.

At the same time, we believe that the DMCA safe harbors overall have had a very positive impact on free speech by enabling the emergence of the Internet as “a unique and wholly new medium of worldwide human communication.” *Reno v. American Civil*

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<sup>9</sup> See, e.g., <http://www.chillingeffects.org/dmca512/>.

*Liberties Union*, 521 U.S. 844, 850 (1997). In that decision, Justice Stevens observed that “it is no exaggeration to conclude that the content on the Internet is as diverse as human thought.” *Id.* at 852. From the user’s perspective, the Web is comparable “to both a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services.” *Id.* at 853. From the publishers’ point of view, the Web “constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can ‘publish’ information.” *Id.* The DMCA safe harbors have encouraged commercial enterprises and nonprofit institutions such as libraries and universities to invest in the infrastructure and platforms that facilitates this “worldwide human communication” by placing reasonable limits on their liability for the infringing acts of their users.

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