



December 12, 2007

The Honorable Howard L. Berman  
Chairman  
Committee on the Judiciary,  
Subcommittee on Courts, the Internet, and Intellectual Property  
U.S. House of Representatives  
2221 Rayburn H.O.B.  
Washington, DC 20515

The Honorable Howard Coble  
Ranking Member  
Committee on the Judiciary,  
Subcommittee on Courts, the Internet, and Intellectual Property  
U.S. House of Representatives  
2468 Rayburn H.O.B.  
Washington, DC 20515

Re: Section 104 of H.R. 4279

Dear Chairman Berman and Ranking Member Coble:

The Library Copyright Alliance (LCA) consists of five major library associations: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. These five associations collectively represent over 139,000 libraries in the United States employing 350,000 librarians and other personnel. These five associations participate in the LCA to address copyright issues that have a significant effect on the information services libraries provide to their users. The LCA's mission is to foster global access to information for creative, research, and educational uses.

LCA members have serious concerns that proposed Section 104 of H.R. 4279 will exacerbate the orphan works situation. During the 109<sup>th</sup> Congress, this subcommittee recognized that the availability of statutory damages inhibited a wide range of socially beneficial uses of orphan works – works whose copyright owners could not be identified or located. Accordingly, this subcommittee favorably reported the Orphan Works Act of 2006 (H.R. 5439), which would have eliminated the remedy of statutory

damages if the user performed a reasonably diligent search for the owner prior to the use. Unfortunately, Congress did not enact H.R. 5439.

Section 104 would make the orphan works situation even worse with respect to compilations and derivative works. By greatly increasing the amount of statutory damages plaintiffs could recover for infringements of compilations and derivative works, Section 104 will make libraries and their patrons even more reluctant to use orphan works of this sort. For example, under Section 104, a library that placed on its website a 1945 compilation of 100 letters from World War II G.I.s to their loved ones could face statutory damages of \$15,000,000.

Just eight years ago, Congress increased the maximum levels of statutory damages by 50 percent. We believe that a further increase at this time is completely unwarranted. Rather, the subcommittee should be exploring whether to limit statutory damages to cases of direct infringement, as proposed by H.R. 1201, or to broaden the existing safe harbors for innocent infringements by libraries, nonprofit educational institutions, and public broadcasters.

While LCA members are still reviewing the other provisions of H.R. 4279, we wanted to provide you with our views concerning Section 104 prior to the hearing on December 13. We look forward to working with you and your staff on this legislation.

Respectfully,

A handwritten signature in blue ink that reads "Doug Newcomb". The signature is written in a cursive, slightly slanted style.

Douglas W. Newcomb  
Chief Policy Officer, Special Libraries Association

**On behalf of the Library Copyright Alliance:** the American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, and the Special Libraries Association (contact information for each association is attached).



## American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy. <http://www.aall.org/>  
Contact: Mary Alice Baish (202-662-9200)



The American Library Association (ALA) is a nonprofit educational organization of over 65,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society. <http://www.ala.org/>  
Contact: Lynne Bradley (202-628-8410)



## Association of Research Libraries

The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the diverse communities they serve. ARL pursues this mission by advancing the goals of its member research libraries, providing leadership in public and information policy to the scholarly and higher education communities, fostering the exchange of ideas and expertise, and shaping a future environment that leverages its interests with those of allied organizations. <http://www.arl.org/>  
Contact: Prudence S. Adler (202-296-2296)



The Medical Library Association (MLA), a nonprofit, educational organization, is a leading advocate for health sciences information professionals with more than 4,700 members worldwide. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public. <http://www.mlanet.org/>  
Contact: Carla Funk (312-419-9094 x.14)



The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 80 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives. <http://www.sla.org/>  
Contact: Doug Newcomb (703-647-4923)