

**Transcription**  
**Section 108 Study Group, Public Roundtable #2**  
**March 16, 2006, Rayburn House Office Building, Washington, D.C.**

**Introduction**

MS. RASENBERGER: Welcome to the Section 108 Roundtable discussion. Thank you very much for coming today. I'm Mary Rasenberger. I'm the policy planner for special programs with the Copyright Office. Also from the Copyright Office are Jule Sigall, Associate Registrar for Policy and International Affairs, and Chris Weston, who is an attorney advisor working on the Section 108 Group. I hope you all know what this Section 108 Group is right now and know why we're here today?

(Laughter.)

MS. RASENBERGER: I'll give you a little bit of background very briefly. The group was created in response to growing concerns that the provision of Section 108, the exceptions for libraries and archives, don't address many of the important issues that libraries and archives feels are related to the use of digital technology, specifically, and a growing awareness that actual practice and the provisions of 108 do not always match currently.

The group was conceived of by the Register of Copyrights, Marybeth Peters, who may be joining us today. She has other obligations today, but she's going to try to drop in -- by her and also the Assistant Librarian for Strategic Initiatives, Laura Campbell. Laura leads the National Digital Information Infrastructure Preservation Program, NDIIP. It's a national program for digital preservation. Congress gave the Library some money and a mandate to figure out how to create a national strategy for digital preservation. She is leading that program. The program is actually the official sponsor of the Section 108 Group and the roundtables today.

The mission of the group was to help determine how the law should specifically -- the provisions of 108 should be revised to assure an appropriate balance among the interested creators and copyright holders on the one hand and the libraries and archives on the other in a way that best serves the national interest. You can find that on our website. It's all over. The important point there is appropriate balance. The group is comprised of 19 members split approximately half from the library and the archive world. I should say they are all copyright experts, and the other half are from the various copyright industries. We tried to get as wide a perspective as we could from the various industries. Of course, there are 19, so it's not split evenly. We've also got June Besek, who is serving as a legal advisor and sits in the middle. We kept the group small and the membership consistent very intentionally. That was to avoid problems that could, with prior efforts like this where there is changing membership and people had to be continuously brought back up to speed, because we really wanted this to be a successful effort and to have a real work product at the end of the day -- something we could take to Congress and even get passed. So the group was really struggling with trying to come up with ideas that are balanced in every respect.

We asked the group to produce findings and recommendations by the end of 2006. The group has been meeting for about a year already and has been working, I have to say, incredibly hard. The issues are very

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complex and it's really been quite something to see the commitment that every member of the group has brought to this. The meetings have closed until now as you're probably aware. The reasons for that are practical -- to get everybody up to speed, to try to engender open discourse and to be able to create a good work product.

The purpose of the roundtable today is to hear from other interested parties. It's really important to the group. I cannot emphasize enough that the group has not made any final decisions on any of these issues yet and is very interested in your input, both in the roundtables today and we're also asking for written comments, which you can submit anytime up until April 17th.

It would be extremely helpful for the groups, the roundtables today, are the discussions in the notice. They're being limited only to some of the issues that the group is looking at. We will be discussing issues related to eligibility for the 108 provisions, also the 108 exceptions related to preservation and replacement. We will hold a roundtable in the fall to address some of the other issues -- probably late September. We don't have a firm date or location for that yet.

I'd like to introduce our two co-chairs -- very able and very committed. Dick Rudick, who is the recently retired general counsel of Wiley and Sons; and Lolly Gasaway, who is a professor of law and director of the Law Library at the University of North Carolina. They will lead our discussions today. We're indebted to both of them for their incredibly hard work and commitment. I think they had no idea what they signed up for.

This goes for the whole group. Some of whom are here today. I see a number of you out there. I will ask the Section 108 members who are here to stand up and introduce themselves and give their affiliation. They are not at the table today because we are here to listen to you. However, I think I speak for all them that they'd be happy to talk to you during the break or at any point. Why don't we start on the left side with Bob Oakley, if you could stand up, and we'll go in order from left to right.

MR. OAKLEY: Sure. I'm Bob Oakley, I'm the director of the law library at Georgetown University.

MS. WHALEN: I'm Maureen Whalen, and I'm associate general counsel at the J. Paul Getty Trust.

MR. NEAL: My name is Jim Neal, I'm vice-president for information services and university librarian at Columbia University.

MS. FISHEL: I'm Martha Fishel, I'm deputy chief of the public services division at the National Library of Medicine.

MS. NISBET: Good morning. I'm Miriam Nisbet, I'm legislative counsel for the American Library Association.

MR. WATERS: I'm Don Waters, program officer from the Mellon Foundation.

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MS. RASENBERGER: There may be a couple of other members joining us later. We'll introduce them when they come.

Before we start, I want to thank Joe Keeley. I'm not sure if Joe's here or not. He is the counsel for the IT Subcommittee and he's responsible for getting us this room. Thanks Joe. Let me hand it over to Dick and Lolly. Thank you.

MS. GASAWAY: Good morning everyone. We're really glad to see you here. We're looking forward to hearing from you. We'll begin by asking a series of questions on each of the main topics that are being discussed today. The initial questions will be those set out in the notice, so we assume that you have seen those. Then we may ask follow-up questions of individuals or even of the group.

Dick and I will ask the initial question, then we'll see if the people from the Copyright Office -- Mary, Chris or Jule -- have any follow-up questions that they believe we need to ask in order to get the information. Everyone at the table will be invited to respond to each of our questions. We're going to ask you to raise your hand when you want to respond and keep it raised until you see us jot down your name. Dick and I are actually getting pretty good at this list keeping.

(Laughter.)

MS. GASAWAY: Make sure that we kind of acknowledge you and they will have you in the queue. We will do our best to take you in the order that we see you. We have a tight schedule today and a lot to cover. The times for each of the four main topic areas are in the handout that you received. It's more important for us to discuss the critical issues in depth rather than to cover every single questions. We highlighted the ones where we need the information from you. So we may cut some of the discussion short to get to those more critical issues. We presume you've read the Federal Register notice and the information paper and there are copies available, if you have not, that are at the back.

MR. RUDICK: I want to take just a moment to review the ground rules, which are in the brief agenda you have in front of you. I don't know why we call these ground rules because it's a mix of rules, advice and requests.

(Laughter.)

MR. RUDICK: I'm going to be semi- avuncular. And Lolly's remark about our role makes me think of a quote from James Thurber, which is "It's easier to ask some of the questions than to come up with all of the answers." Well, they didn't laugh in Los Angeles either.

(Laughter.)

MR. RUDICK: As Mary mentioned, we're a small group. That facilitates our work. But everything has a downside. We're going to talk about tradeoffs today. That's a tradeoff in the format. This is one of

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several ways in which we try to rectify that downside by giving you an opportunity to give us information and perspectives. Some of which may parallel what we have inside the group. Some of which comes from outside group, which we want very much to have. In order to give everyone a chance to speak, we really are going to limit everybody to three minutes on the first go around. If there is time left, there will be a chance for another go around, in which you may have an opportunity to comment on each others comments.

Mary mentioned that our report is to include findings. For that reason, it's important, useful to use examples, to be specific, to be clear about your terminology. I would suggest that it's more important to cover what's really important to you than to cover everything because you have an opportunity to submit written comments. So it's better to talk at sufficient length about the critical issues than to cover everything. I don't think you need to worry about that. I brought with me a mascot which is not your typical mascot. It's not cute and fuzzy. It's a squishy toy and it really is meant to emphasize that we're talking about, in some case, powerful new rights and there are tradeoffs. There are pluses and minuses to everything. In some cases, with the rights might come new restrictions. So I think it is important to consider as much as you can. We recognize this is your first chance to comment and you haven't had an opportunity to think or consider how compromises should work. But, in the end, there will be compromises. But it will help us if you can really give us indications of how these tradeoffs might work for you. What are your biggest problems, your major concerns with respect to the tradeoffs that, in the end, are going to have to be made?

In the end, if we don't get your input, we'll have to make assumptions, which isn't as good. So I may wave this at you or Lolly may do it. I didn't miss anything.

MS. RASENBERGER: One quick thing. If you can please speak up loudly. We do have a transcription service here and they are trying to get every word. The first time you speak, if you could please introduce yourself -- say your name and your affiliation and each time you speak one of the chairs will probably repeat your name so the transcription service has the speaker.

MR. RUDICK: We missed one thing which we always miss one thing. We just ask people around the table to introduce themselves very briefly -- just name and affiliation.

MS. PRESSMAN: I'm Rebecca Pressman. I have a number of affiliations. I work as a librarian at Rutgers and I also teach information policy for Florida State's library school.

MR. LIPINSKI: Tom Lipinski, center for information policy research at the University of Wisconsin, Milwaukee.

MR. KAUFMAN: Roy Kaufman, legal director for John Wiley and Sons and author.

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MS. RICHMAN: Carol Richman, Sage Publications.

MR. KUPFERSCHMID: Keith Kupferschmid for the Software and Information Industry Association.

MR. ADLER: Allan Adler with the Association of American Publishers.

MS. CONSTANTINE: Jan Constantine, general counsel, the Authors Guild.

MR. AIKEN: Paul Aiken, executive director, Authors Guild.

MR. PERLMAN: Victor Perlman, American Society of Media Photographers.

MR. BUTTLER: Dwayne Buttler, I'm the endowed chair for communication at the University of Louisville.

MR. FRAZIER: Ken Frazier, director of libraries at the University of Wisconsin.

MR. JOHNSON: Carl Johnson, director of the Copyright Licensing Office of Brigham Young University.

MR. ARMS: Bill Owens, professor of computer science, Cornell University.

MS. GASAWAY: We're ready to dive into our first topic and we are right on time. Let's hear it for us Type As. There's nothing like being right on time.

(Laughter)