

April 28, 2006

[Federal Register: Date (Volume 71, Number 31)]

[Notices]

[Page 79999-8002]

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 6-10801]

Section 108 Study Group: Copyright Exceptions for Libraries and Archives

AGENCY: Copyright Office, Library of Congress

ACTION: Notice of public roundtables with request for comments.

<http://www.copyright.gov/fedreg/2006/71fr7999.html>

Point of Contact:

Bonnie Klein

Chair, CENDI Copyright Working Group

Technical Reports Team Lead

Defense Technical Information Center

Ft. Belvoir, VA 11060-6218

On behalf of CENDI, I respectfully submit comments to the Section 108 Study Group for its consideration.

CENDI ([www.cendi.gov](http://www.cendi.gov)) is an interagency working group of senior Scientific and Technical Information (STI) Managers from 12 U.S. federal agencies.

- \* Defense Technical Information Center (DTIC) (Department of Defense)
- \* Office of Research and Development & Office of Environmental Information (EPA) (Environmental Protection Agency)
- \* Government Printing Office (GPO)
- \* NASA Scientific and Technical Information Program (NASA)
- \* National Agricultural Library (NAL) (Department of Agriculture)
- \* National Archives and Records Administration (NARA)
- \* National Library of Education (NLE) (Department of Education)
- \* National Library of Medicine (NLM) (Department of Health and Human Services)
- \* National Science Foundation (NSF)
- \* National Technical Information Service (NTIS) (Department of Commerce)
- \* Office of Scientific and Technical Information (DOE OSTI) (Department of Energy)
- \* USGS/Biological Resources Discipline (USGS/BRD) (Department of Interior)

These programs represent over 96% of the FY06 federal research and development budget.

CENDI's mission is to help improve the productivity of federal science- and technology-based programs through effective scientific, technical, and related information-support systems. In fulfilling its mission, CENDI agencies play an important role in addressing science- and technology-based national priorities and strengthening U.S. competitiveness.

CENDI's vision is to provide its member federal STI agencies a cooperative enterprise where capabilities are shared and challenges are faced together so that the sum of accomplishments is greater than each individual agency can achieve on its own.

CENDI applauds the Section 108 Study Group discussions. We support changes that would enable and provide a firm legal basis for our digital information collection, dissemination and preservation activities and those throughout the federal sector.

Topic 1: Eligibility for Section 108 Exceptions:

1) CENDI recommends that eligibility be based on a combination of the nature of the institution and its activities.

CENDI strongly recommends that "governmental bodies" be specifically included in any definition or criteria for eligibility. Precedent and context for the use of the term is found in the "Technology, Education and Copyright Harmonization Act" (TEACH Act).

2) CENDI recommends that eligibility extend to "trusted repositories that maintain virtual collections."

Although CENDI includes three national libraries and the national archives, the majority of its members do not fit the current criteria for Section 108 eligibility. We define ourselves as institutional repositories and national information centers. Primarily our collections contain data that is produced by or for our agencies funded with government appropriations. However, our collections include copyrighted works for which we are stewards. We are also expanding our collections to capture born-digital "gray-literature" on the Web. We do not have physical premises or loan materials for public or community-of-interest use. We provide copies of our analog materials on a cost-recovery fee for dissemination as authorized under the Office of Management and Budget (OMB) Circular A130, Management of Federal

Information Resources 7.(c)

<http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>. Access to our digital online materials is generally provided at no cost to users.

Our operations are best described by a definition attributed to Clifford Lynch. "A repository is a set of services that a scientific/scholarly institution offers for the management and dissemination of digital materials created by that institution and its community members. It is most essentially an organizational commitment to the stewardship of these digital materials, including long-term preservation where appropriate, as well as organization and access or distribution."

[http://www.i-tor.org/en/system\\_info/about/definitie\\_repository/](http://www.i-tor.org/en/system_info/about/definitie_repository/)

An accepted definition of "Gray Literature" is "information produced on all levels of government, academics, business and industry in electronic and print formats not controlled by commercial publishing i.e. where publishing is not the primary activity of the producing body."

(www.greynet.org, Luxembourg, 1997 - Expanded in New York, 2004)

Since the inception of the Internet, CENDI members have provided and continue to provide online access to "virtual collections." For example:

\* The Department of Defense (DoD) Defense Technical Information Center's (DTIC) Public Scientific and Technical Information Network (STINET) <http://stinet.dtic.mil/> was launched in 1998. Today it provides World-Wide Web access to almost a million citations and 148,000 full-text documents.

\* The Department of Energy Office of Scientific Information (DOE OSTI) <http://www.osti.gov/> provides access through a set of cutting-edge, Web-based products for technical reports, scientific journals, and preprints - the three main scientific and technical information (STI) sources.

\* The U.S. Geological Survey (USGS) Biological Informatics Office leads the development of the National Biological Information Infrastructure (NBII) <http://www.nbio.gov/>, a network of distributed databases and information sources on biological resources, and acts as a clearinghouse for biological information.

\* The National Aeronautics and Space Administration (NASA) <http://www.sti.nasa.gov/STI-public-homepage.html> provides access to NASA's STI output through various targeted databases, such as the STI database (the world's largest collection of aeronautical and aerospace information), the NASA Image eXchange (a metasearch engine that accesses NASA's imagery), and the NACA (National Advisory Committee of

Aeronautics, NASA's predecessor organization) collection of technical reports.

\* On a much larger scale, CENDI members administer and participate in Science.gov [www.science.gov](http://www.science.gov) which is a gateway to over 47 million WWW pages of authoritative selected science information provided by 16 U.S. Government agencies.

\* DTIC, DOE, NASA and others such as U.S. Intelligence and Law Enforcement agencies, also maintain controlled access repositories to virtual collections of classified, sensitive but unclassified (SBU), and publicly available information. These collections are not available to the public, but used in the conduct of government business. This information is vital in maintaining U.S. national security and global competitive advantage for the public good.

3) CENDI recommends extending the exception to include outsourced activities for information collection, dissemination and preservation when contractors act on behalf of or as legal agents of the Government.

The Federal Acquisitions Regulation (FAR) 17.6 and other federal procurement guidance give the following definitions of some types of government outsourced activities <http://www.ornl.gov/adm/wfo/gocom&o.htm> :

\* Government-Owned, Contractor Operated (GOCO) facility is a manufacturing plant that is owned by the Government and operated under contract by a non-government, private firm.

\* Management and operating contract (M&O) means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or-controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

Examples include:

\* Federally Funded Research and Development Centers (FFRDC) <http://www.nsf.gov/statistics/nsf05306/> administered by non-profits, colleges & universities, and industrial firms. FFRDC non-profits and colleges and universities would qualify as eligible for the proposed Section 108 exception in their own right. However, Sandia National Laboratories <http://www.sandia.gov/> might not qualify unless the law specifically allows outsourced activities. Sandia is a

government-owned/contractor operated (GOCO) facility. Lockheed Martin is the industry partner that manages Sandia for the U.S. Department of Energy's National Nuclear Security Administration

\* Department of Defense (DoD) Information Analysis Centers (IAC) <http://iac.dtic.mil/> are similar to FFRDCs. The majority of IACs are operated by industrial firms. An example is the Information Assurance Technology Information Analysis Center (IATAIC) <http://iac.dtic.mil/iatac/> managed by Booz Allen Hamilton under the direction of a Government Steering Committee. IATAIC serves as a central authoritative source for Information Assurance vulnerability data, information, methodologies, models, and analyses of emerging technologies relating to the survivability, authenticity, and continuity of operation of information systems critical to the nation's defense.

In conclusion, CENDI recommends that Section 108 eligibility extend to non-profit and government Libraries, Archives, Museums and Trusted Repositories that collect, preserve and provide access to their collections for public benefit. Eligibility should also extend to outsourced commercial activities for information collection, dissemination and preservation when performed on behalf of or acting as legal agents of the Government.