Associated Audio Archivists Committee of the Association for Recorded Sound Collections

Written testimony concerning proposed revisions to 17 USC 108
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Topic A: Amendments to current subsections 108(d), (e), and (g)(2) regarding copies for users, including interlibrary loan

Question 1: How can the copyright law better facilitate the ability of libraries and archives to make copies for users in the digital environment without unduly interfering with the interests of rights-holders?

AAA agrees with the public statement submitted by the American Library Association that we as librarians and archivists have an obligation to provide the broadest possible access to our collections for the public, without interfering with the market for non-commercial purposes. Libraries and archives have long established our role as responsible stewards of works both in and out of copyright. All responses included in this document seek to amend the copyright law in order to better facilitate the ability of libraries and archives to make copies for users in the digital environment without unduly interfering with the interests of rights holders. Within this document, we suggest a model whereby audiovisual content may be digitally preserved and delivered in a way that would both preserve the integrity of intellectual content and create broader access to that content without interfering with or undermining the interests of rights-holders to develop new business models and modes of distribution.

Question 2: Single-copy restriction for copies made under (d) and (e)

The single-copy restriction for copies made under subsections (d) and (e) should be replaced with a flexible standard more appropriate to the nature of digital materials. The suggested language of a “limited number of copies as reasonably necessary for the library or archives to provide a requesting patron with a single copy of the requested work” is satisfactory. This amendment should apply both to copies made for a library’s or archives’ own users and to interlibrary loan copies, since the method and technology behind digital delivery is relatively the same in both circumstances with mediated access through authentication technology.

Questions 3 & 4: How prevalent is library and archives use of subsections (d) and (e) for direct copies for their own users? For interlibrary loan copies? How would usage be affected if digital reproduction and/or delivery were explicitly permitted?

It is the mission of libraries and archives to make available materials from our collections both directly and through interlibrary loan. Research and scholarship are now largely conducted in a digital environment, and users increasingly expect to be able to access/receive digital copies of materials. The amount of born-digital material in library and archival collections has increased significantly, and promises to continue to increase at an exponential rate. It is imperative that libraries and archives be permitted to make digital copies *and* deliver those copies digitally to users. It makes little sense to produce an analog copy of a born-digital work, and then mail it to the requesting patron. This places restrictions on born-digital materials that do not exist with analog materials. Further, it makes little sense in terms of economic efficiency and customer service to ignore digital delivery and reproduction.

Use of subsections (d) and (e) by libraries and archives for direct copies and interlibrary loan copies would be significantly enhanced if digital production and delivery were explicitly permitted. Such allowances would allow more accessibility to collections, both for on-site and off-site users. Digital reproduction and delivery for interlibrary loan would facilitate access to collections that would otherwise be inaccessible for research due to the impracticality of shipping the work. Many libraries as a policy do not make available audiovisual materials through interlibrary loan due largely to the fragility of the media, unwieldy physical aspects, or playback requirements. Given the extent to which audiovisual collections are used for study, instruction and scholarly research, not to mention the importance of these documents as primary resources, it is overly restrictive and unnecessarily prohibitive to exclude these materials from interlibrary loan agreements. Librarians and archivists as a general trend are risk averse, and violation of the law *as written* is prohibited by our professional code of ethics; explicitly permitting digital reproduction and delivery would encourage the higher level of efficiency and accessibility to our collections that current technology has made available.

Question 5: If the single-copy restriction is replaced with a flexible standard that allows digital copies for users, should restrictions be placed on the making and distribution of these copies? If so, what types of restrictions? For instance, should there be any conditions on digital distribution that would prevent users from further copying or distributing the materials for downstream use? Should user agreements or any technological measures, such as copy controls, be required? Should persistent identifiers on digital copies be required? How would libraries and archives implement such requirements? Should such requirements apply both to direct copies for users and to interlibrary loan copies?

If the single-copy restriction is replaced with a flexible standard allowing digital copies for users, it is expected that restrictions should be placed on the distribution of these copies. The use of persistent identifiers should be encouraged, though some libraries and archives may not have the technological capability to do so. Notification should be included with the distributed copy stating that the copy was made under Section 108 and clearly state that further distribution is unauthorized. Notification could be implemented through the use of a click-through agreement, clearly stating that further distribution of the item is prohibited without the permission of the copyright holder, where applicable, and unauthorized copying and distribution will be subject to the full penalties of the law. The same procedures should be applied to both direct copies and interlibrary loan.

Question 6: Should digital copying for users be permitted only upon the request of a member of the library or archives' traditional or defined user communities, in order to deter online shopping for user copies? If so, how should a user community be defined for these purposes?

Currently, access to networked electronic resources and interlibrary loan privileges are restricted to a defined user community, facilitated through authentication procedures. Much like a library card, users are issued a user name and password granting access to these resources. Digital copies of materials delivered through interlibrary loan currently expire after a given number of viewings or days, whichever comes first.

Question 7: Should subsections (d) and (e) be amended to clarify that interlibrary loan transactions of digital copies require the mediation of a library or archives on both ends, and do not permit direct electronic requests from, and/or delivery to, the user from another library or archives?

As stated in response to Topic B, AAA agrees with the statement of the Music Library Association here that mediation should still be administered by the library or archive developing the digital copy; however, once the request for interlibrary loan has been made, the library fulfilling the request should be permitted to deliver the digital file directly to the user with all accompanying notices pertaining to copyright and limitations of use.

Question 8: In cases where no physical object is provided to the user, does it make sense to retain the requirement that "the copy or phonorecord becomes the property of the user"? 17 U.S.C. 108(d)(1) and (e)(1). In the digital context, would it be more appropriate to instead prohibit libraries and archives from using digital copies of works copied under (d) and (e) to enlarge their collections or as source copies for fulfilling future requests?

In the cases where no physical object is provided to the user, it does make sense to retain the requirement that "the copy or phonorecord becomes the property of the user." 17 U.S.C. 108(d)(1) and (e)(1). In the digital context, this stipulation would still place the full responsibility of abiding by the copyright law on the end-user. As is the case for copies of physical items, libraries will not use digital copies distributed under (d) or (e) to enlarge their collections without permission from or payment to the copyright owner.

Question 9: Because there is a growing market for articles and other portions of copyrighted works, should a provision be added to subsection (d), similar to that in subsection (e), requiring libraries and archives to first determine on the basis of a reasonable investigation that a copy of the requested item cannot be readily obtained at a fair price before creating a copy of a portion of a work in response to a patron's request? Does the requirement, whether as applied to subsection (e) now or if applied to subsection (d), need to be revised to clarify whether a copy of the work available for license by the library or archives, but not for the purchase, qualifies as one that can be "obtained"?

The provision as it applies to subsection (e) requiring libraries and archives to first determine on the basis of a reasonable investigation that a copy of the requested item cannot readily be obtained at a fair price should be retained. Libraries and archives should be allowed under (d) and (e) to make copies of sound recordings in digital form from recordings in obsolete or less common formats (e.g., vinyl discs, 8-track tapes) if the recording has not been reissued and is not available in a modern format. In the case of subsection (d), the library should be able to distribute a digital copy of a limited portion of a sound recording without researching the current market much as is the case with photocopies of articles.

The provision should not be revised to clarify whether a copy of the work is available by license, since many licensing agreements may be overly prohibitive to libraries and archives due to pricing or other licensing restrictions. Discussion of licenses does not need to be part of the law. The license itself will stipulate if and how the material can be copied and/or distributed.

Question 10: Should the Study Group be looking into recommendations for revising the CONTU guidelines on interlibrary loan? Should there be guidelines applicable to works older than five years? Should the record keeping guideline apply to the borrowing as well as the lending library in order to help administer a broader exception? Should additional guidelines be developed to set limits on the number of copies of a work or copies of the same portion of a work that can be made directly for users, as the CONTU guidelines suggest for interlibrary loan copies? Are these records currently accessible by people outside of the library community? Should they be?

AAA supports the Music Library Association position on CONTU revision:

Whether or not revisions are deemed necessary, our position is that this falls outside of the scope of this discussion and that any revisions to CONTU guidelines should take place in a separate forum with specific opportunities for discussion, and should take place independently of revisions to section 108. The issue has not been adequately discussed in the public roundtables or discussion for a engaged by the Section 108 Study Group.

Question 11: Should separate rules apply to international electronic interlibrary loan transactions? If so, how should they differ?

AAA believes that separate rules should not be created to apply to international electronic interlibrary loan.

Topic B: Amendments to subsection 108(i)

Question 1: Should any or all of the subsection (i) exclusions of certain categories of works from the application of the subsection (d) and (e) exceptions be eliminated? What are the concerns presented by modifying the subsection (i) exclusions, and how should they be addressed?

AAA concurs with the basic statement drafted by the Music Library Association as it pertains to music, which reads as follows:

"Subsection (i) should be eliminated because it constitutes an arbitrary and inequitable distinction between textual and non-textual content. As a result of this subsection, libraries cannot provide access to musical works (or other works of art) for uses which are recognized as non-infringing for text materials under subsections (d) and (e). It is difficult to see how modifying, rather than eliminating, the subsection would provide any additional benefit for access to non-textual materials."

The original intent of section (i) with respect to musical sound recordings is unclear. While many musical sound recordings are produced for entertainment, many textual materials are also used for entertainment, so this can not logically account for the exclusion of music from section 108. The law needs to recognize the use of musical sound recordings for study, instruction, cultural enrichment, and musicological and scholarly research. Today, the vast majority of musical sound recordings are issued in small quantities and go out of print in less than five years. A recent study found that "ten percent or less of listed recordings have been made available by rights holders for most periods prior to World War II. For periods before 1920, the percentage approaches zero. " (Tim Brooks, *Survey of Reissues of U.S. Recordings*, CLIR Publication Series, no. 133 (Washington, D.C.: Council on Libraries and Information Resources and Library of Congress, 2005).

There is no essential difference between textual and non-textual works with respect to copyright. Both text and other forms of materials are capable of a wide variety of purposes. Placing restrictions or prohibitions on libraries and archives to provide copies of materials not readily available in the commercial marketplace removes an avenue of responsible and legal distribution of music and other non-textual materials.

Section 108 should allow users of copyrighted materials to obtain items through libraries, while providing safeguards for rights holders of music and other non-textual materials against possible abuses. These safeguards currently in section 108 include the distribution of a single item not available commercially for a single specific request, from a single individual, for no commercial advantage with the understanding that the law prohibits further distribution of the item.

Of course, section 108 only applies to sound recordings issued after 1972, because section 301 (c) excludes federal copyright protection to recordings issued before that date. Without federal copyright protection until 2067, pre-1972 sound recordings are subject to the laws of the individual fifty states and libraries and archives will not be able to use the provisions granted under section 108 for either musical or

non-musical sound recordings. AAA urgently recommends that the Copyright Office examine and study section 301 (c) to remedy this situation as soon as possible.

The membership of AAA and its parent organization (ARSC) includes many who hold rights to musical sound recordings. Consequently, the organization recognizes the benefits of copyright protection for the production and dissemination of musical sound recordings to the general public, libraries, and archives, while at the same time it recognizes the need of libraries and archives to provide users with copies of materials from their collections. AAA recommends the removal of music from subsection (i).

Question 2. Would the ability of libraries and archives to make and/or distribute digital copies have additional or different effects on markets for non–text–based works than for text–based works? If so, should conditions be added to address these differences? For example: Should digital copies of visual works be limited to diminished resolution thumbnails, as opposed to a ''small portion'' of the work? Should persistent identifiers be required to identify the copy of a visual work and any progeny as one made by a library or archives under section 108, and stating that no further distribution is authorized? Should subsection (d) and (e) user copies of audiovisual works and sound recordings, if delivered electronically, be restricted to delivery by streaming in order to prevent downloading and further distribution? If so, how might scholarly practices requiring the retention of source materials be accommodated?

It is important to recognize that libraries and archives are consumers of non-text-based works, and in the case of some musical sound recordings, libraries may be the principal market. Thus, libraries and archives do not inherently undermine the market for non-textual materials, and may in fact contribute to that market. It is reasonable to expect that libraries will be purchasing musical sound recordings as digital files, using streaming (or some other future technology) to control the distribution of the content of those files to their defined users, and providing digital copies on interlibrary loan to users of other libraries under section 108 limitations.

Libraries should be able to provide copies of musical sound recordings under section 108 (d) and (e) of a complete portion, section, or a whole musical work. In the vast majority of cases, an excerpt or small portion of a musical work is of no value to the requestor. Libraries are not currently limited to providing only a portion of an article from a periodical, or an excerpt from a short story. The reader needs to know how the story begins and ends. The same is true for musical works. Further, in multi-sectional musical works the user needs to hear the work in its entirety to understand the context of the individual pieces or parts of the work.

Libraries and archives should be encouraged through guidelines to adopt the use of persistent identifiers, if they possess the technical capability to do so, to identify a copy made under section 108 and state that further distribution is unauthorized. However, the library or archive should be required to inform the requestor under section 108 that further distribution of the item is prohibited without the permission of the copyright holder and abuses would be subject to the full penalties of the law.

Streaming is an option that libraries and archives may choose to use, but should not be required to do so. Researchers may need to consult an item numerous times over the course of their study, and limiting their use of a musical sound recording to a specific time period could create conditions whereby the requestor would be tempted to make his/her own copy of the streamed file. The digital file provided under section 108 should become the property of the user, who is then fully responsible to abide by copyright law.

Question 3. If the exclusions in subsection (i) were eliminated in whole or in part, should there be different restrictions on making direct copies for users of non–text–based works than on making interlibrary loan copies? Would applying the interlibrary loan framework to non–text–based works require any adjustments to the CONTU guidelines?

AAA agrees with the statement of the Music Library Association here:

"Access to direct copies of works should still be mediated, either through an interlibrary loan department or a formal program administered in the library that develops the sound recording collection (e.g. the music library). So, restrictions should be the same in both cases."

Under sub-section (d), a requestor should be able to obtain a copy of a portion of a musical sound recording that is no longer available at a fair price or of a musical sound recording where just the part of the musical sound recording is not available separately from the entire copyrighted work as long as it does not comprise a substantial portion of the whole work. Libraries and archives should be allowed to develop guidelines and policies as to what is considered a "substantial portion" of a whole work. Subsection (e) deals with entire works that are not available at a fair price, so there should be no distinction between textual and non-textual works.

Once a request is made under section 108 and the interlibrary loan request is made, the library fulfilling the request should be able to send a digital file directly to the user with notification of the limitations on use of the item. To further involve the library originating the request, would simply be needless bureaucracy. Those making use of interlibrary loan services are acting responsibly within accepted policies and procedures to respect copyright owners' privileges under the law, and different restrictions for musical sound recordings than for textual materials are not justified.

Question 4. If the subsection (i) exclusions were not eliminated, should an additional exception be added to permit the application of subsections (d) and (e) to musical or audiovisual works embedded in textual works? Would doing so address the needs of scholars, researchers, and students for increased access to copies of such works?

AAA fully supports the statement of the Music Library Association regarding question 4 as it applies to musical sound recordings.

"We would prefer not to consider even the possibility of keeping subsection (i) exclusions, as their elimination is crucial to the equitable consideration of music and textual works under the law. In treating musical works differently, subsection (i) has adverse effects on music creators and scholars by stifling the exchange of ideas which interlibrary loan was designed to support. The exemptions in subsections (d) and (e) should *a fortiori* be applicable to musical and audiovisual works embedded in textual works.

"Keeping subsection (i) but allowing application of (d) and (e) to embedded works would provide small relief in specific circumstances, but it would not solve the problem. In addition, it would create additional disparity in cases where electronic materials are published with hyperlinks to external sites with pertinent scores or audio files instead of embedded files. The subsection (i) restrictions are already affecting the publishing of dissertations in electronic format. As more colleges and universities move (as some already have) to publishing dissertations exclusively in digital form, this problem will worsen."

Topic C: Limitations on Access to Electronic Copies, Including via Performance or Display

Question 1: What types of unlicensed digital materials are libraries and archives acquiring now, or are likely to acquire in the foreseeable future? How will these materials be acquired? Is the quantity of unlicensed digital material enough to warrant express exceptions for making temporary copies incidental to access?

The quantity of born-digital materials that libraries and archives are acquiring is significant enough now to warrant express exceptions for making temporary copies, and there is no reason to expect less than exponential growth in this number as the years progress. Of particular concern to audio preservationists are the legions of Digital Audio Tapes only now making their way into libraries and archives. DAT is a

notoriously unstable media thought to have a shelf-life of as little as eight years, after which time one should expect signal drop-outs and intermittent loss of signal in the archival recording. This process cannot be reversed. Somewhat less problematic, though a concern all the same, are optical media such as Mini-Discs, compact discs, and DVDs.

Born-digital materials are likely to come from a variety of places. One thinks immediately of compact discs with regards to music libraries, though unlicensed musical recordings are at least as likely to be accessioned on Digital Audio Tape; so too are radio broadcasts. Digital recording technologies have replaced the cassette for most researchers collecting oral histories as well, with recordable compact discs, Mini-Discs, and Flash memory cards among the more common media.

It is important to note here that, from the standpoint of digital object preservation, once a file is created, its original context (audio, video, image, text) is no longer important. Certainly, the software applications needed to open these files years down the road are a consideration; but none of this matters if our collection's materials are lost to media failure or corrupted by viruses, etc. The job of an audio collection's librarian/archivist is to manage and preserve the intellectual content held within his/her institution. Thinking simply in terms of the prolonged integrity and safety of digital files, libraries and archives must have the freedom to create incidental and permanent surrogate access copies, as well as multiple preservation backup copies on varying media and in multiple locations inside the institution's access-protected network. The "three-copy limit" in Subsections (b) and (c) of Section 108 disallows the creation of the copies libraries and archives must produce if they are to follow internationally recognized best practice specification for digital object preservation.

Question 2: What uses should a library or archives be able to make of a lawfully acquired, unlicensed digital copy of a work? Is the EU model a good one namely that access be limited to dedicated terminals on the premises of the library or archives to one user at a time for each copy lawfully acquired? Or could security be ensured through other measures, such as technological protections? Should remote access ever be permitted for unlicensed digital works? If so, under what conditions?

Access to lawfully acquired, unlicensed digital copies should be acceptable under Section 108 so long as (a) the deed of gift or another like contract does not indicate that the copyright owner wishes the materials to be inaccessible and (b) the method of delivery prohibits a change of possession of said recording.

On-site listening on workstations with disabled Internet capabilities and blocked access to all outgoing ports (CD-ROM, USB, firewire, etc) ensure that files cannot leave the premises. Similarly, providing password restricted streaming files can facilitate access to recordings at remote locations. The fact that sound files are a non-visual medium actually makes the accessibility of audio a much safer situation than media delivered via more tangible formats such as PDF since streaming files are never actually delivered to the user. In this sense, one might think of streaming files as yo-yos sent through early 20th century, intra-office postal delivery tubes, in that they snap back before one has the chance to grab said file's contents. This method allows access to recorded sound files without introducing tangible copies into the cyber-sphere. Users simply have access to the file until such time as they close the application used for playback or a pre-set time limitation runs out. There is never a change of possession with this technology.

Simultaneous use should be allowed if for the purpose of research, private study, or educational instruction. Unlicensed recordings are nearly always primary source material, ripe with value for scholarly research. Likewise, instructors should be able to share recorded interviews with a classroom since this type of content is so inherently full of academic potential: interviews are primary source material; the vocal cadences of an interviewee are important for linguistics; an unpublished musical performance may be the only recording of a particular piece by the work's author; saying nothing for the fact that unique, unlicensed recordings are often used to instruct audio preservation students. Simultaneous use is central to the educational and research value of recorded sound materials.

Question 3: Are there implied licenses to use and provide access to these types of works? If so, what are the parameters of such implied licenses for users? What about for library and archives staff?

It is common for libraries and archives to use implied license when determining availability for use by patrons. Collection development files and deeds of gift are primary sources of information in this regard and wishes on the part of the donor are respected, providing access to some, all, or none of the collection accordingly.

Access on the part of library and archives staff is similarly determined by implied license. For example, it is assumed that, unless the deed of gift specifies otherwise, a recorded sound object may be accessed by staff if the intention of use facilitates cataloging, preservation, or investigation as to the item's intellectual content. (Unmarked recorded sound materials, for example, are worthless unless staff is able to audition for content evaluation.) Likewise, for preservation efforts since the creation of a preservation master involves not only playback of a recording in its entirety but also subsequent plays during the quality assurance process.

Question 4: Do libraries and archives currently rely on implied licenses to access unlicensed content or do they rely instead on fair use? Is it current library or archives practice to attempt to provide access to unlicensed digital works in a way that mirrors the type of access provided to similar analog works?

Libraries and archives approach providing access to unlicensed materials cautiously because of the uncertainties of what is allowed under current copyright laws, and generally they rely on Fair Use when access is required to conduct research.

It is not current practice for libraries and archives to provide access to digital materials in a way that mirrors similar analog works. While this would be both convenient and preferred, The Digital Millennium Copyright Act is simply too restrictive and prohibitive. Section 108 should, however, allow libraries and archives to make both incidental and preservation copies of these works.

Furthermore, whether an item is analog or digital in nature should be of no consequence here if said item is part of an otherwise "open" collection. This is especially the case for sound recordings since a digital surrogate needs to be created before absolutely any collection item can be considered accessible to users. Failure to do so facilitates potential damage to the original item; and given that we are talking about unlicensed recordings here, there is little chance an institution could find a replacement copy if indeed the original was damaged or destroyed. Consequently, the archival community is already at a point where digital copies (CD-Rs, local MP3s, streaming files, etc) are the only copies made available to users; in effect, rendering moot whether an item was born-digital or not.

Question 5: Are the considerations different for digital works embedded in tangible media, such as DVDs or CDs, than for those acquired in purely electronic form? Under which circumstances should libraries and archives be permitted to make server copies in order to provide access? Should the law permit back-up copies to be made?

It is the view of AAA that digital works embedded in tangible media such as DVDs or CDs should be given the same considerations as those delivered via hard drive, Flash memory card, or other file-level digital carrier. However, protections should be afforded to libraries and archives without the means to copy the embedded files to a more secure location such as a server. It would be an unfortunate fate indeed if organizations, already without the means to preserve their collections as best practice specification, became somehow further limited because a new amendment to Section 108 failed to take them into consideration.

Redundancy is, without question, the preferred course of action here. Both the Digital Library Federation and the International Association of Sound and Audiovisual Archives recommend storing copies in multiple

locations and on more than one media so that other copies, not susceptible to the same dangers as the first, will survive catastrophe. Dedicated preservation servers are a commonly recommended destination. Unfortunately, Section 108's three-copy limit renders illegal the use of both RAID Array servers and the tape systems used to back them up since the creation of multiple internal (albeit undistributed) backup copies is the very essence of each system's design; and, as it happens, the very reason they are recommended. Consider also that many archives use "archival" gold CD-Rs and off-line hard drives for further backup and the dilemma becomes clearer.

Given that a responsible preservation program calls for the creation of multiple copies of each intellectual entity and that audio preservation results in at least three unique versions of each original recording, Section 108 prohibits archivists from creating any backup copies whatsoever. This despite the Corporation for National Research Initiaitves' assertion that "clearly a single replica subject to the threats [inherent to the digital realm] has a low probability of long-term survival, so replication is a necessary attribute of a digital preservation system." (Rosenthal et al, *Requirements for Digital Preservation Systems: A Bottom-Up Approach*, D-Lib Magazine, Vol. 11, no. 11, Corporation for National Research Initiatives, 2005.)

AAA recommends the removal of the three-copy limit from subsections (b) and (c) so as to facilitate preservation at best practice specifications.

Question 6: Should conditions on providing access to unlicensed digital works be implemented differently based upon the category or media of work (text, audio, film, photographs, etc)?

It is AAA's opinion that libraries and archives should have the freedom to make available in an unlimited number of ways the wide range of media both included and implied in this question, so long as the method of delivery does not facilitate unlawful redistribution of the work. Since technologies develop at a rate faster than that afforded to the reassessment of copyright legislation, restricting in a nuanced manner vehicles for digital media access seems a short-sighted decision and one that invites any number of troubles as new technologies emerge.

Question 7: Are public performance and/or display rights exercised in providing access to certain unlicensed digital materials? For what types of works? Does the copyright law need to be amended to address the need to make incidental copies in order to display an electronic work? Should an exception be added for libraries and archives to also perform unlicensed electronic works in certain circumstances, similar to the 109(c) exception for display? If so, under what circumstances?

Point of clarification: First of all, it should be mentioned that "electronic" and "digital" are not synonymous when discussing recorded sound media. Magnetic tape, for example, is electronic, so let there be no mistake in verbiage as this issue is concerned.

Any verbiage of this law that renders illegal the creation of incidental copies created to facilitate lawful performance or display of a work should be removed if, under current or foreseeable circumstances, said verbiage prohibits otherwise lawful performance or display under fair use. Obvious examples include performance or display for research or educational purposes such as those detailed in our comments to Question 4.

Libraries and archives should have the right to play recordings and display visual works. We come short, however, of endorsing an exception as restrictive as Section 109, which limits the owner of a lawfully made copy to "the projection of no more than one image at a time." A similar stipulation in 108, would prevent libraries and archives from providing access to more than one user at a time, even in cases where each user is at a different listening station consuming different playback sessions for different research or educational purposes. Given that access to digital files is increasingly moving toward on-site network-driven listening stations, libraries and archives should be able to allow more than one user to audition a legally acquired work at the same time. Concurrent auditioning sessions at altogether different stations is not a "performance" of that work.

Let this comment also serve to further our assertion that the “three-copy limit” unreasonably restricts a library or archives’ ability to perform its duties as a provider of primary source materials for purposes of research, education, and other ventures for which the neither library, archives, nor the user stands to directly benefit financially.