

**Comments on issues raised in the February 15 Federal Register notice pertaining to  
Section 108 of the Copyright Act**

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“Section 108 was enacted as part of the 1976 Copyright Act in recognition of the vital role of libraries and archives to our nation’s education and cultural heritage, and their unique needs in serving the public. The exceptions were carefully crafted to maintain a balance between the legitimate interests of libraries and archives, on the one hand, and rights-holders, on the other, in a manner that best serves the national interest.”<sup>1</sup>

Librarians and archivists take these responsibilities bestowed upon our communities very seriously –we are in the business of preserving our cultural heritage. I believe that there are compelling concerns that merit revisiting aspects of Section 108, and offer some thoughts that might address these concerns in a manner that does not conflict with the interests of rights-holders.

There are conditions under which electronic access to digital preservation or replacement copies should be permitted under subsections 108 (b) and (c) outside the premises of libraries or archives. Such electronic access would be in keeping with the requirement of 108 (a) that the collections of the library or archives are open to the public. Such electronic access would also align with the permission extended in 108 (b) to allow deposit for research use in another library or archives because, while enabling electronic access over the Internet would certainly go beyond depositing in another library or archives, for many Americans their only access to electronic materials on the Internet is through their library. To preclude access to this large group of Americans would be unreasonably detrimental to the public interest.

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<sup>1</sup> Section 108 Study Group, “Information for the March 2006 Public Roundtables and Request for Written Comments.” February 10, 2006 Consulted website <http://www.loc.gov/section108/docs/FRbackground2-10-06.doc> on February 24, 2006.

Electronic access to digital preservation or replacement copies should be permitted under subsections 108 (b) and (c) outside the premises of libraries or archives subject to conditions that sustain access to information which promotes the progress of science and the useful arts while providing reasonable protection to rights-holders from harm to their existing markets or usurpation of potential markets. The following conditions or restrictions should apply:

- The electronic access is provided without any purpose of direct or indirect commercial advantage;
- No fees are charged for accessing the material;
- Prior to accessing the material the user must acknowledge that he or she will use the material in accordance with copyright laws;
- The library or archive has, after a reasonable effort, determined that usable access to this material, regardless of format, cannot be obtained at a fair price; and
- Should usable access to this material, regardless of format, become available at a fair price the library or archive will no longer provide access outside the premises of the library or archive.

Any permitted off-site access should not be restricted to a library's or archives' "user community." Such restrictions would represent an unreasonable burden for a library or archive, would be meaningless in the context of a public library, would be counter to the spirit of the expectation in 108 (a) that the collections of the library or archives are open to the public, and would provide no additional protection to rights-holders. Rights-holders interests are protected sufficiently by the requirements stated above. Moreover, attempting to eliminate all risk of user infringement would be analogous to requiring that automobile manufacturers sell no vehicles capable of exceeding the maximum legal speed limit. It is not the responsibility of libraries to curtail how people use or misuse or abuse information. At some point laws may be broken, and rights-holders have the ability to seek remedies in accordance with pre-existing and sufficient protections currently afforded to them under the law.