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To whom it may concern, following are my initial comments to the specific questions posed by the Section 108 Study Group: Copyright Exceptions for Libraries and Archives.

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### To Specific Questions

*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?*

It is crucial that access to the public sphere of knowledge be nurtured and supported if we are to progress as a species. Increasing restrictions on the flow of scholarly information have a profoundly detrimental effect on the "information commons" and ultimately on our collective intelligence. The copyright law "can 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" by reflecting trust in and support for the fairmindedness of library professionals. Librarians are intimately familiar with the dialectic between the information needs of individuals and fair use of a given copyright holder's work. The rights of the copyright holder, and most especially those who are also the creator of a work, must be acknowledged and supported, but without unduly impeding an individual's access to relevant information. Library professionals are accustomed to the complex analyses necessary to ensure that egregious violations of the intent of the Copyright Act are not circumvented or ignored.

*2. Should the single-copy restriction for copies made under subsections (d) and (e) be replaced with a flexible standard more appropriate to the nature of digital materials, such as "a limited number of copies as reasonably necessary for the library or archives to provide the requesting patron with a single copy of the requested work"? If so, should this amendment apply both to copies made for a library's or archives' own users and to interlibrary loan copies?*

YES. The incidental copies are a technicality.

*3. How prevalent is library and archives use of subsection (d) for direct copies for their own users?*

For us, very prevalent.

*For interlibrary loan copies?*

Not much effect.

*How would usage be affected if digital reproduction and/or delivery were explicitly permitted?*

We use digital delivery already in filling many ILLs. It is important to keep pace with the advance of technology and greater latitude for digital reproduction and/or delivery is the most constructive step to take.

*4. How prevalent is library and archives use of subsection (e) for direct copies for their own users?*

For us, not very prevalent due to small volume of requests.

For interlibrary loan copies? How would usage be affected if digital reproduction and/or delivery were explicitly permitted?

*Little effect: rare requests for whole works, few are available digitally.*

*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?*

I will have comments on this at a later stage.

*6. Should digital copying for users be permitted only upon the request of a member of the library's or archives' traditional or defined user community, in order to deter online shopping for user copies?*

Definitely not. What of users without local library services? What if there is no online commercial route to get the article? If so, how should a user community be defined for these purposes?

*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 to not permit direct electronic requests from, and/or delivery to, the user from another library or archives?*

No. This would greatly inhibit access and our current services to graduates and other patrons.

*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 subsections (d) and (e) to enlarge their collections or as source copies for fulfilling future requests?*

I will have comments on this at a later stage.

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 a 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?*

Definitely no, very burdensome to investigate each 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 purchase, qualifies as one that can be "obtained"?*

Definitely no, very burdensome to investigate each request.

10. *Should the Study Group be looking into recommendations for revising the CONTU guidelines on interlibrary loan?*

Yes.

*Should there be guidelines applicable to works older than five years?*

No, smaller commercial market usually.

*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?*

I will have comments on this at a later stage.

11. *Should separate rules apply to international electronic interlibrary loan transactions?*

No.

*If so, how should they differ?*