

June 29, 2016

Maria A. Pallante  
Register of Copyrights  
U.S. Copyright Office  
101 Independence Avenue S.E.  
Washington, DC 20559-6000

Dear Ms. Pallante:

We at UCLA read with great interest the Federal Register notice “Draft Revision of the Library and Archives Exceptions in U.S. Copyright Law,” issued on June 7, 2016.

Though the notice invites interested parties to submit meeting requests, such secret meetings place private above public interest. Furthermore, many in the library and archives communities will be unable to schedule a trip to Washington, DC, and phone meetings are rarely as successful at sharing concerns and engaging in a dialogue. I have requested an in-person meeting, but I also want to share our key issues and concerns in this open letter.

Section 108 was passed in the pre-digital era, but its provisions, together with forty ensuing years of practice and judicial rulings, remain central to many day-to-day services and activities of libraries and archives. This fact directly rebuts the arguments of those calling for Section 108’s reform on the basis of its presumed obsolescence. Following are examples of those activities and services.

- No library is large enough to encompass all published works. Interlibrary loan services, provided by many libraries at no or modest cost to patrons, broaden access and help achieve the purpose of copyright as it appears in the U.S. Constitution. Any legislation that imposes changes to existing ILL practices would restrict access to only those patrons who live near the largest libraries or who are rich enough to pay.
- Making copies of published or unpublished materials for preservation purposes, including migration to new formats and website archiving, keeps them accessible to future generations. Recorded knowledge spans the length of human history and the breadth of human forms of expression; libraries and archives bear the primary responsibility for ensuring that it doesn’t crumble into dust. Limiting this activity raises the alarming specter of intellectually impoverishing our descendants.
- Making copies for patrons, including of special collections items, opens up access for educational, scholarly, and research uses, which provide broad benefits to society.
- Libraries and archives take great care to inform patrons of copyright law as it applies to patron-initiated copies. Recognizing this, Section 108 relieves libraries and archives of liability for patrons’ use of copiers, printers, scanners, or other reproduction equipment.
- Its language regarding fair use forms a valuable statutory supplement to the judicial concept of fair use. Relying exclusively on the judicial concept and on the litigation required is an inadequate substitute for this essential statutory language.

As you recall, the Section 108 Study Group, which included representation from a variety of interested parties, reached consensus on only a few points. Any attempt to redraft Section 108 will raise the same intractable issues the study group encountered and take up valuable time by the U.S. Congress and the library and archives communities. Furthermore, other sections of copyright law are far more in need of reform than Section 108 in order to enable libraries and archives to fulfill their mission of collecting, preserving, and making accessible the cultural and historical record.

It should be noted that many of the loudest voices calling for Section 108 to be overhauled come from commercial legacy content industries, not from authors or creators. The primary interest of these industries is financial; they want to maintain control over the creators' content and maximize their income, not protect the rights of authors. By contrast, protecting the rights of authors and creators lies at the heart of the values that libraries and archives hold dear. As steadfast guardians of intellectual property, we educate users about copyright, protect the rights of creators, and serve both by making recorded knowledge broadly accessible on a daily basis. We encourage the Copyright Office to place public interest first, viewing the concerns and issues expressed by the library and archive communities who directly serve the public with the same concern and degree of engagement it views those of the content industries.

In closing, I wish to note that I and my colleagues are surprised and dismayed that the process to gather input on potential revisions is a closed rather than open one – i.e., secret, private individual meetings only on request rather than pre-scheduled, open, public discussions. This closed process is antithetical to all principles of open government as well as to the public role and responsibility of the U.S. Copyright Office. The U.S. system of public libraries is justifiably admired around the world for helping build generations of informed, engaged members of the American public. On an issue that could potentially impact the public so directly, creating a closed rather than an open process fails to acknowledge the key constituents those libraries – and the federal government – serve. In the interests of openness, we call on you to make public a list of all parties you meet with on this NOI, together with details about your discussions.

Thank you for your attention to our concerns. We look forward to continuing to engage with you and your staff on important issues regarding U.S. Copyright Law.

Sincerely,

A handwritten signature in black ink that reads "Virginia Steel". The signature is fluid and cursive, with the first name "Virginia" being more prominent than the last name "Steel".

Virginia Steel  
UCLA University Librarian

cc: Barbara Boxer, Senator, U.S. Senate  
Dianne Feinstein, Senator, U.S. Senate  
Bob Goodlatte, Chair, U.S. House of Representatives Committee on the Judiciary  
John Conyers, Ranking Member, U.S. House of Representatives Committee on the Judiciary  
Darrell Issa, Member, U.S. House of Representatives Committee on the Judiciary  
Mimi Walters, Member, U.S. House of Representatives Committee on the Judiciary  
Zoe Lofgren, Member, U.S. House of Representatives Committee on the Judiciary  
Judy Chu, Member, U.S. House of Representatives Committee on the Judiciary  
Karen Bass, Member, U.S. House of Representatives Committee on the Judiciary  
Scott Peters, Member, U.S. House of Representatives Committee on the Judiciary  
Carla D. Hayden, Nominee, Librarian of Congress