TO: ALA Executive Board

RE: Copyright Law and Libraries

ACTION REQUESTED/INFORMATION/REPORT:

Information Report on how copyright law and ALA policy shape ALA's strategies in the Congress, courts and international venues.

ACTION REQUESTED BY:

Report provided by Miriam Nisbet, ALA Legislative Counsel, at request of the Board

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DRAFT OF MOTION:

Not applicable.

DATE: March 23, 2007

BACKGROUND:

Copyright law is one of the important legal frameworks that bear directly upon the activities of libraries as they provide access to and ensure the preservation of many kinds of materials in all formats. Copyright law also is critical to the way library users are able to make use of those materials every day, whether for study, work or relaxation.

ALA has a long history of promoting a balanced copyright law and of expressing its views on what the law should be. At times, libraries have been the sole voice in the public debate over how to achieve that balance – a balance that we believe is a cornerstone of access to information and is of vital importance to the public's interest. This consistent organizational policy shapes our national legislative and litigation strategies, as well as our work on international issues of significance to libraries.

Attachments

Libraries and Copyright Law: A Brief History

1. The Balance of Copyright Law
2. Framework for ALA activities and positions on copyright
3. The Legislative Arena
4. The Courts
5. Libraries in the World of Treaties, Trade and Commerce
6. Licensing
7. Conclusion

Introduction

Copyright law is one of the important legal frameworks that bear directly upon the activities of libraries as they provide access to and ensure the preservation of many kinds of materials in all formats. Copyright law also is critical to the way library users are able to make use of those materials every day, whether for study, work or relaxation.

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1. The Balance of Copyright Law

Libraries have played and continue to play a critical role in our country, serving as (1) access points to a vast array of information in all formats; (2) preservers of current and historical information; and (3) protectors of the public interest in access to and discussion of information. Copyright law provides the legal framework for how libraries carry out their mission and it also directly affects how library users are able to make use of the information to which they gain access (physically and virtually) at these institutions.

Our US copyright law provides for legal rights for owners of a wide variety of works – literary, musical, audio-visual, choreographic, architectural, computerized, etc. Our copyright law also contains special provisions for ensuring that the rights of copyright holders to control the copying and distribution of their works are not so tight that people cannot use the works in innovative and creative ways. There are express exceptions to the otherwise exclusive rights of copyright owners; these exceptions are in the law to help ensure a balance of interests that is integral to the way the founders of our country thought copyright should work.

This balance of interests is grounded in the U.S. Constitution, Art. I, Section 8, which gives Congress the power to pass laws to provide economic incentives to the creators of works – by giving them, for limited times, the exclusive right to control how their works are used. But the

Constitution also says that the "limited" monopoly is intended to "promote the Progress of Science and useful Arts." This is sometimes referred to as the "bargain of copyright": On the one hand, the government gives incentives for creation by giving a term of copyright protection that allows recoupment of one's investment. On the other hand, that protection is not absolute, it has some flexibility and elasticity because the law also permits some use of those innovations by others so that they will create still more and will learn.

How does our copyright law accommodate this societal need to use those works for education and research and for public knowledge? By providing that there are some uses of copyrighted works in some circumstances that do not require a permission slip from the copyright holder.

These provisions – for libraries and universities - include:

- fair use (17 US Code, Sec. 107) - use of works for teaching, criticism, reporting
- preservation copying, copies for users, and inter-library lending of copyrighted works by libraries and educational institutions (17 US Code, Sec. 108)
- first sale, which allows the owner of a particular copy of a work to sell, lend or otherwise dispose of that copy (17 US Code, Sec. 109) (this provision is key to our ability to lend books)
- classroom instruction by a non-profit educational institution, including some limited performance or display for distance education (17 US Code, Sec. 110)

These provisions are concrete expressions of the congressional determination that the public interest is served by ensuring that libraries are able to serve their users directly and to perform other functions that are vital to our national interests. Also, libraries are so critical to the functioning of copyright law that after decades of debate, Congress determined that the law needed to include special provisions to allow for their activities. (For a history of Section 108, you might want to look at the background documents available at www.loc.gov/section108/papers.html.)

Recently the balance in copyright law has faced a "digital challenge." That is, new technologies are transforming the way works of authorship are experienced – from text to motion pictures and recorded sound and the various new multimedia formats – as well as how they are created, disseminated, stored, accessed, and preserved. Digital technologies enable rights-holders to make more content available to more people via the Internet, to disseminate material more quickly and efficiently, to re-issue older material with better quality or new functionality, as with digitally remastered CDs and DVDs. And libraries are using these technologies to digitally preserve, reproduce, distribute, and otherwise provide access to copyrighted materials. These are positive developments for all of us.

But there are also threats to copyright holders that are inherent in the enhanced ability to share information through digital means because the ability to copy works, leaving out the copyright owner entirely, is enhanced too. In other words, technology exacerbates the threats to the ability of the copyright owner to exploit his or her works commercially -- another fundamental founding principle of our nation – because the owner may lose control of the work.

In response to these threats, Congress gave new protections and powers to copyright holders in passing the Digital Millennium Copyright Act (DMCA) in 1998. The DMCA gave legal "teeth" to owners to allow or prevent particular uses of their material, through the use of technological protection measures (TPMs) or digital rights management (DRM) systems. At the same time, Congress held off on other changes that might be needed for information users to maintain a balance of power. Instead, Congress directed studies of some of the thorny issues involved, such as distance education and first sale, and the potential need for further adjustment of the copyright law.

In making those adjustments in 1998, and in holding off on other changes, many information users as well as libraries and other cultural institutions, believe the threats to them have become greater. The traditional balance in the copyright law has been altered, and not in favor of the users. Libraries are attempting to address the change in balance in a number of ways, described below.

2. Framework for ALA activities and positions on copyright

We face the challenge of keeping the "balance" in many venues: the legislatures (US Congress and sometimes in the states), the courts, the Executive Branch agencies, and international organizations both governmental and non-governmental. As we work through the issues in all of these ways, ALA staff is guided by the ALA Policy Manual (Sections 50.3; 50.15; 51; 503.1.19; 58.1), ALA's Federal Legislative Policy, resolutions passed by Council (attached at Tab A), and guidance and direction from our oversight committees (primarily the Committee on Legislation).

In all of our endeavors, we make clear that the libraries' position is grounded in the legal framework. Libraries are among the best educators on how copyright works and on the importance of respecting the rights of copyright holders. But our starting and ending point is to ensure that the copyright law enhances the ability of all Americans to continue to enjoy access to the full range of information and ideas in print or online.

Not infrequently we encounter confusion about "fair use," as if it is merely a vague and insubstantial idea. Fair use is a well-established legal doctrine that is now explicit in the copyright law: It is not an infringement of copyright to use a work "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research." 17 US Code, Section 107. Fair use is intended "to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster." *Stewart v. Abend*, 495 U.S. 207, 237 (1990).

Ensuring that fair use is alive and well is particularly important to libraries because of its linkage with the Constitution's guarantee of freedom of expression. Indeed, the US Supreme Court has recently reminded us that "copyright law contains built-in First Amendment accommodations," in part through its fair use provision that allows the public to use copyrighted works without having to get permission. *Eldred v. Ashcroft*, 537 U.S. 186, 219 (2003). To this end, ALA Council has passed a number of resolutions to emphasize the importance of ensuring the continued vitality of fair use, especially in the digital age. (Fourteen selected ALA Resolutions on Copyright are attached.)

3. The Legislative Arena

- DMCA and the Library of Congress Rulemaking

The purpose of DRM technology is to control access to, track and limit uses of digital works. The controls are normally embedded in the work and accompany it when it is distributed to the consumer. DRM systems are intended to operate after you have obtained access to the work. In other words, when you get the product, the controls - the restrictions on what you can do with it - are already there when you start using it. (There is another problem that we will not address here: You do not necessarily know about the controls when you purchase or license the product and there is no legal requirement for a manufacturer or vendor to disclose that fact.)

Restrictive DRM presents serious issues for libraries and users through "downstream" control over consumer use of legitimately acquired works. Here are several examples:

- A librarian wants to go around copy protection mechanisms in DVDs or CD-ROMs to make a copy for preservation or archiving. Libraries and archives must be able to make such preservation copies well into the future, as digital storage formats become obsolete. Preservation of knowledge is a core mission of libraries.

- A foreign language teacher wants to circumvent technological access controls so that digital works purchased abroad can be played on electronic devices purchased in this country.

- A librarian wants to unlock a technological measure to make a copy for inter-library loan purposes.

None of these activities is currently allowed under the DMCA's Section 1201, which prohibits circumventing a technological lock placed on a copyrighted work to prevent access. Yet, each of the examples involves a copy paid for by a library and a use otherwise permitted by the Copyright Act.

Libraries have been trying to address this particular issue by requesting the Librarian of Congress to make an exception under the DMCA's anti-circumvention provision (17 US Code, Section 1201(a)). The law allows such exceptions, through a lengthy rulemaking process that takes place every three years. We have argued strenuously that the law should not apply if libraries and their users are circumventing locks so that they can engage in fair use and other permitted, non-infringing activities.

In the more than eight years after the DMCA was passed (in the course of three triennial rulemaking proceedings), the Librarian of Congress has agreed to make only six narrow exceptions to the prohibition on circumventing technological locks. For example, in 2003 the American Foundation for the Blind and the library associations asked for an exception to allow people with vision or print disability to circumvent technological protection measures placed on electronic books that prevent the "read-aloud" function and that prevent the conversion of text to

speech or Braille. This seems eminently reasonable and right, yet the publishers vigorously resisted such an exemption. Fortunately, the Librarian ultimately agreed to grant the exemption, but only for the next three years. Renewal of the exemption had to be made all over again in the 2006 rulemaking process.

- DMCA and legislative remedies

Since 1998 several bills have been introduced in Congress to address DMCA provisions that were seen as needing adjustment along the lines that libraries have been requesting. In February 2007, the most recent bill specifically aimed at the DMCA anti-circumvention provision was introduced, the Freedom And Innovation Revitalizing U.S. Entrepreneurship (FAIR USE) Act of 2007, H.R. 1201. We are strongly urging Members of Congress to co-sponsor this bill.

The FAIR USE Act would make permanent the six exemptions from the DMCA's Section 1201 anti-circumvention provision that were approved by the Librarian of Congress at the end of 2006. Two of these exemptions are particularly important to the library community: the exemptions for screen readers for the visually impaired and for film clip compilations for college media studies classes. By making these exemptions permanent, the Fair USE Act will be a strong step towards ensuring that these important activities can continue in the future and that valuable resources will not be wasted in renewing the exemptions every three years.

Additionally, the FAIR USE Act would extend the determinations of the Librarian of Congress in six narrow circumstances. For example, the FAIR USE Act would extend the film clip exemption to all classrooms instead of just college media studies classes. It would allow access to public domain works, as well as works of substantial public interest. The FAIR USE Act would also permit a library to circumvent technological protections for the purpose of preservation of works in a library's collection. The inclusion of this provision recognizes that preservation of our cultural and scientific heritage is one of a library's most critical functions.

- Other copyright bills – examples from 109th Congress

. . . Orphan Works

We expect to see the reintroduction in the 110th Congress of legislation to provide for use of works whose owners cannot be located ("orphan works") even after a good faith, diligent search. The following explanation of how the law would work was provided by Jonathan Band, LCA's outside counsel.

Orphan works are works whose copyright owners cannot be identified and located. Libraries and archives possess millions of orphan works in their collections, in the form of photographs, letters, manuscripts, drawings, and older books. These works often have great historic and cultural significance. However, because the copyright owners cannot be located, libraries cannot obtain the rights holders' permission to make these works widely available to the public. This leaves libraries on the horns of a dilemma. Libraries can either disseminate the works and face the risk of the copyright owners demanding statutory damages and injunctive relief; or leave the works in archives, where few people can see them.

In 2005, the US Copyright Office, with extensive public participation, conducted a study of the orphan works problem. The Copyright Office concluded that Congress should enact legislation that limited the remedies available against legitimate users of orphan works. After lengthy negotiations among interested parties, a bill was introduced in 2006, but it was not passed before the 109th Congress recessed.

Under the previous bill, if a person performed a reasonably diligent, but ultimately unsuccessful, search for the copyright owner prior to the use, the remedies available to a reappearing owner were limited. Instead of statutory damages, which can range up to $150,000 per work infringed, commercial users would pay reasonable compensation for all past uses, as well as for any future uses permitted by the court. The bill defined reasonable compensation as the fee for which the owner licenses the work at issue. Thus, the bill required the user to pay the amount he would have paid had he succeeded in finding the owner prior to the use. If a noncommercial user stopped the use as soon as receiving notice from the owner, the noncommercial user was exempt from paying reasonable compensation.

The previous bill also provided an important limitation on injunctive relief. If the user created a new work that incorporated the existing work, the user could continue the use, so long as he paid reasonable compensation. However, a court could enjoin the user from making new uses after the owner reappeared.

In addition to libraries, publishers and consumers support orphan works reform. Photographers and other visual artists voiced concerns, many of which were addressed in the negotiations prior to the introduction of the bill last year. Continuing opposition by some visual artists overlooks the fact that owners will still recover reasonable compensation for unauthorized use of their works. Thus, orphan works legislation permits socially valuable uses of obscure works without harming the legitimate interests of copyright owners. This legislation fits comfortably within ALA's copyright principles in terms of promoting preservation and access to copyrighted works in a manner that also respects the rights of copyright owners. (At Midwinter 2007 ALA Council passed a resolution in support of a renewed orphan works bill – see Tab A.)

. . . Broadcast Flag

An example of recent legislation that ALA and its fellow library associations opposed successfully was a bill mandating a "broadcast flag." Several years ago, the Federal Communications Commission issued an order that would have required that all digital electronic devices, such as television sets and personal computers, include code (known as the "broadcast flag") that accompanies digital television (DTV) signals to prevent redistribution of the digital content over the Internet. ALA was part of a successful a suit against the FCC to stop the broadcast flag rule from going into effect in 2005. Having passed through the executive and judicial branches of government, this issue entwining law and technology then moved to the legislative branch.

In January 2006, the U.S. Senate Commerce, Science and Transportation Committee held a hearing on the "broadcast flag." Testimony on behalf of the Library Copyright Alliance (LCA),

which is comprised of ALA, AALL, ARL, MLA and SLA, explained to the Committee how the broadcast flag would hamper distance education activities by libraries and educational institutions. In subsequent meetings with Senate staff, libraries urged that if there were to be a "flag," Congress should ensure that any flag regime includes appropriate exceptions for lawful uses. This could be done by prohibiting the flagging of certain kinds of content such as public domain material; news and public affairs programs; and programming designed for educational and informational needs.

Eventually a large and complex telecommunications bill emerged in the Senate that included a "Digital Content Protection Act" to give the FCC authority to reissue its flag rule. Although the bill included ambiguous language about exceptions for educational and other uses along the lines of fair use, giving a clear signal that the library concerns were heard and heeded, we were not disappointed when the larger bill failed to be acted upon in the 109th Congress.

- Section 108 study group on possible changes to the copyright law:

As mentioned above, in recent years many librarians and educators have been concerned that the copyright exceptions applicable to libraries and archives (17 US Code, Section 108) no longer align with current technologies used by libraries and their patrons. To fulfill and advance their public missions, libraries, archives, and other cultural heritage institutions acquire and incorporate large numbers of works in digital formats into their holdings, providing access to those materials and in some cases converting analog materials into digital form in order to preserve them. These activities are done in accordance with the law and are consistent with the historic role of libraries and archives in preserving information and creative expression and ensuring the continued availability of these works to future generations. Yet the current law provides, for example, that digital preservation or replacement copies cannot be made available off the physical premises of the library.

In 2005 the Library of Congress assembled a Study Group of about 20 people to make recommendations on how to revise Section 108 to address these changing needs while ensuring an appropriate balance among the interests of creators and other rights-holders, libraries and archives in a manner that best serves the national interest. www.loc.gov/section108. Several members of the library community serve on the group, which is still meeting and expects to make its recommendations in Summer 2007. But it is unclear at this time whether the group will be able to agree on what changes can be made without disturbing the advantages to libraries that exist in the current law, even with its limitations.

The background papers, transcripts and comments, including those filed by ALA, are available on the Section 108 Study Group web site: www.loc.gov/section108.

4. The Courts

Libraries are perceived as a voice for the public good, and therefore our participation is often sought in "friend of the court" (*amicus curiae*) briefs in important intellectual property cases.

We welcome opportunities to explain the library perspective and to expound upon ALA's Principles for the Networked World, such as:

- Intellectual property law must ensure a fair and equitable balance among the needs of the public, creators, and copyright owners.

- Fair use, first sale and related library and educational exceptions must be fully realized in the networked world.

- Copyright law must encourage a robust public domain that includes facts, government information and similar resources and that is enriched by the timely cessation of copyrighted terms.

- Intellectual property policy must enhance the ability of public, education, research and library communities to promote the advancement and sharing of knowledge, innovation and creativity.

- Intellectual property law must provide fair and reasonable incentives to authors and creators.

These principles, though they provide clear and significant guidance, do not always make it easy to decide whether to participate in a case or to decide which party to support. For example, a recent case, *Tasini v. The New York Times, Inc.*, presented a challenge regarding how to balance competing interests within the library community. The case involved questions of fairness, equity, and a recognition of an author's rights to retain, modify, or assign copyright on a work he or she has created. Thus for the library associations, a critical objective of any discussion swirling around this contentious case was the need to balance the needs of long-term preservation, the nature and cost of access to information in commercial electronic databases, and the fairness of compensating an author for his or her work.

After much discussion, it was decided that support for the freelance writers was consonant with our associations' principles and positions. We support the right of an author to decide whether to retain, modify, or assign copyright on a piece that he or she has created. Libraries also recognize and respect the public interest in having access to the work produced by the freelancers. The "friend of the court" brief presented the library perspective to the US Supreme Court concerning the practical effects of the issues at stake in the case. The brief refuted a number of inaccurate claims and offered constructive ways to balance the rights of freelance authors, commercial electronic database producers, publishers, and the public.

The Supreme Court ultimately ruled in 2001 in favor of the freelancers. The Court affirmed the copyright privileges of freelance writers whose works were originally published in newspapers and periodicals and then licensed by the publishers to commercial electronic databases, where the works appeared as singular, isolated articles rather than as part of an entire publication. In contrast, the *Tasini* Court held that microfilm and microfiche were permissible conversions of intact periodicals "from one medium to another." The Court specifically reaffirmed that the

copyright law is media-neutral and that "the transfer of a work between media does not alter the character of that work for copyright purposes."

A related case - almost the mirror image of *Tasini* - is *Greenberg v. National Geographic Society*. ALA and our fellow library associations have a long history with this case, which involves an allegation of copyright infringement against the National Geographic Society (NGS), due to its publication of past issues on CD-ROM. The case concerns whether publishers of collective works and others who may choose to legitimately digitize them can re-publish those works in a digital format without seeking permission of authors or other contributors. Several freelance photographers, as well as some writers, sued the National Geographic Society (NGS) for copyright infringement because some of their works are included in a CD-ROM produced by the NGS. The CD-ROM contains photo-scanned images of the entire print version of the National Geographic magazine from 1888 to 1996 in a searchable format.

A lower court found that the publication on CD-ROM is permissible under the Copyright Act, but in 2001, the U.S. Court of Appeals for the Eleventh Circuit reversed and ruled against the NGS. The NGS appealed to the U.S. Supreme Court and the library associations filed an *amici curiae* (friends of the court) brief in support of the NGS. The U.S. Supreme Court declined to hear the appeal because by then it had essentially ruled on the issue in the *Tasini* case, discussed above. We think that if the Eleventh Circuit had had the benefit of the Tasini decision, it would have ruled the other way, and now we will be able to find out if that is true. That is because the Eleventh Circuit sent the case back to the trial court, which was obliged to follow the appellate court's ruling and so ruled against the NGS. NSG has now appealed again to the Eleventh Circuit. The LCA filed an *amici* brief in support of the NGS in June 2006; the court has not yet ruled.

We also have filed briefs at the appellate and Supreme Court levels in a related case, *Faulkner v. National Geographic Society*. There the lower court and the appeals court for the Second Circuit ruled in favor of the NGS, finding that as long as digital versions place photographs and articles in the same context as the print original, there is no infringement of copyright. Those courts relied upon the Supreme Court's decision in *Tasini*, interpreting the same provision of the Copyright Act.

As noted above, the libraries supported the authors, not the publishers, in *Tasini*. Though it may not be apparent at first blush, our support of the publishers in the two NGS cases is consistent with the arguments we made in *Tasini* as well as our statements about the impact of the case on libraries. Our position is that the Copyright Act permits publishers, libraries, archives, and the public to take advantage of new technologies to preserve and distribute creative works to the public if no changes are made to the original work once republished in a different format. The *Greenberg* case has major implications for projects that involve retrospective digitization of print versions of scholarly materials and the public's access to those materials.

5. Libraries in the World of Treaties, Trade and Commerce

- World Intellectual Property Organization (WIPO)

WIPO is one of 16 specialized agencies in the United Nations system of organizations; it administers 23 treaties dealing with different aspects of intellectual property protection on behalf of its 179 member nations. Because each country grants different intellectual property rights and enforces them in various ways, intellectual property laws sometimes interfere with international trade relations. WIPO works with intergovernmental groups such as the World Trade Organization to create mechanisms for intellectual property protection and enforcement that will minimize these problems. Because of its jurisdiction over treaties dealing with copyright and related rights, WIPO is an important venue for libraries. There are many WIPO initiatives, many relating to other intellectual property aspects, but currently there are four activities that relate directly to libraries.

1. WIPO Provisional Committee on Proposals Related to a WIPO Development Agenda

In 2004, ALA joined several hundred other non-governmental organizations and individuals in signing the Geneva Declaration on the Future of the World Intellectual Property Organization. The declaration demanded changes to the United Nations' approach to intellectual property laws, saying that current rules are unfair to developing countries.

WIPO's Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) has since held several meetings to consider proposals for correcting what many perceive as imbalanced intellectual property protection regimes. In this connection, the Library Copyright Alliance developed a set of Principles that we have been using as we go to WIPO meetings and as we talk with US agencies about the proposals for development. (See the attached WIPO Library-Related Principles, www.librarycopyrightalliance.org/wipo.htm).

Based on these principles, we were able to urge WIPO to adopt specific proposals for development taking into account the following:

- Libraries are founded on the balance of promoting both the rights of creators and the needs of users who require access to information.
- A robust and growing public domain provides new opportunities for creativity, research and scholarship.
- Effective library programs and services are a critical means of advancing knowledge and bringing individuals into the "knowledge economy."
- Libraries and educational institutions can and should be a vital part of the strategies of WIPO and its Member States in promoting intellectual property law.

2. WIPO Treaty on the Protection of Broadcasting Organizations

For several years, the World Intellectual Property Organization (WIPO) has been considering a treaty that would provide copyright-like rights (related rights) to broadcast organizations. The

libraries' position is that there is no compelling public policy reason for the broadcast treaty, given the existence of a convention that already governs broadcasts as well as the absence of any evidence of harm suffered by broadcasters.

In a dramatic – and positive - turnaround in September 2006, the WIPO General Assembly decided to postpone a diplomatic conference to finalize the Broadcast Treaty until late 2007. The General Assembly then directed the WIPO copyright committee to attempt to reach agreement on a treaty that is focused on protection against theft of broadcast and cable signals, rather than protection through a copyright-like scheme. This treaty is not one that directly affects our mission: libraries make limited but not insignificant uses of broadcast materials, consistent with exceptions and limitations in the Copyright Act. However, libraries continue to be part of a coalition of non-profit organizations and industries that are working to prevent a broader treaty, because we must be concerned about the creation of new copyright-like rights that could further diminish the availability of public domain information and compilations of data.

3. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

The WIPO Intergovernmental Committee met in Geneva in early December 2006 (its tenth session) to discuss Draft Objectives and Principles on The Protection of Traditional Cultural Expressions/Expressions of Folklore and on The Protection of Traditional Knowledge. The two lengthy draft documents set out various options for enhancing protection in these areas.

The December meeting concluded with an agreement to allow discussion on substantive issues without specifically negotiating on the draft texts on protection. An eleventh session is tentatively scheduled for July 2 to 10, 2007. After that, the WIPO General Assembly will have to decide on any future work related to the Committee's efforts.

At this time, neither ALA nor its fellow library associations has a stated position on the protection of folklore or traditional knowledge. There are practical and policy reasons why this is a complex and difficult area. For example, there is lack of agreement on what subject matter is covered by which appropriate term, not to mention trying to resolve the tension between recognizing potentially new legal rights that can affect materials that have long been considered to be in the public domain. Thus the LCA is endeavoring to bring together experts in the next few months to hone the issues and to improve our understanding of current practices.

4. WIPO's Potential Treaty on Database Protection

Under US copyright law, basic factual information is in the public domain and is not entitled to copyright protection. However, many databases – which consist of individual pieces of information that have been organized in one collection so that the data are easier to access – are protected because of the creative way that the information in them is selected, coordinated and arranged. Examples of common databases are stock prices and other financial data; realtors' multiple listing service; Lexis-Nexis (legal decisions); travel information, such as hotel directories; Web search engines; Humanities Index (abstracts of journal articles); and Medline

(index of medical journal articles). Databases may also be protected from copying under other laws.

In 1996 the European Commission issued a Database Directive (Directive 96/9/EC) giving copyright protection to databases if they are sufficiently creative. This protection is known as the "sui generis" database right, i.e., a specific property right for databases that is unrelated to other forms of protection such as copyright. Libraries in the US were alarmed at the EC Directive and have thus far successfully opposed such legal protection in the US.

We have been closely following as the World Intellectual Property Organization (WIPO) has been considering a treaty on database protection for the past several years. Right now the possibility of a WIPO database protection treaty seems less threatening, in part because the EC's first-ever evaluation of the protection that EU law gives to databases concluded, in December 2005, that the economic impact of the "sui generis" right on database production is "unproven." Nevertheless, because the WIPO copyright committee continues to include database protection on its meeting agendas, we will continue to carefully monitor that committee's activity.

- Free Trade Agreements

For the past several years, US libraries weighed in on bilateral and multilateral Free Trade Agreements that the US is making with other countries and regions. Our written comments to the US Trade Representative (USTR) urge intellectual property protections that (1) will not impair libraries' ability to preserve works, share them with one another, and provide public access to them; (2) will allow libraries to keep pace with developments in information technology; and (3) will not interfere with Congress and the courts' ability to adjust copyright law to maintain the appropriate balance between the interests of the rights' holders and the public.

In February, we joined several representatives of Internet companies in meeting with the US Patent and Trademark Office, the US Copyright Office and the USTR to explain why it is important for the FTA templates to include references to fair use and to promote the introduction of flexible fair use laws by our trading partners. Such laws not only benefit libraries and educational institutions and their users, but also the providers of Internet services.

- Working with IFLA

ALA's work on international matters often involves coordination and cooperation with the International Federation of Library Associations and Institutions, which has an active Committee on Copyright and Other Legal Matters. When possible, ALA (often as part of the Library Copyright Alliance) joins with IFLA and sometimes other international library groups to write letters, participate in meetings, and issue statements in order to amplify our voice on matters that affect libraries. IFLA and several other international library groups have endorsed our WIPO Library-Related Principles, which helps us to work together more smoothly.

6. Licensing

As libraries acquire more digital resources through license agreements with publishers and information brokers, librarians work to build into contracts the fundamental user rights we see in the copyright law. These user rights include fair use, lending and preservation. Unique issues for libraries may include what can – and cannot be done – with regard to archiving, long-term access, copying by users, off-premises access, micro-data pricing, and interlibrary loan. In addition, there is concern that library users will not enjoy the same fair use rights with electronic resources as they do with print resources.

Another related area of concern is terms in shrink-wrap and click-on license agreements that are unfairly written in favor of licensors. Such terms in these licenses often diverge substantially from reasonable customer expectations and from the public interest. The terms may override what libraries are otherwise allowed to do under U.S. copyright law. The license terms may require that a library "agree" to sue or be used in a distant court in the event of a contractual dispute. Yet there often is no opportunity to negotiate or change the terms.

In that respect, libraries have worked closely with other groups with similar concerns about the unbalanced nature of licensing, especially with non-negotiated licenses. ALA worked successfully for five years to fight the enactment by state legislatures of the Uniform Computer Information Transactions Act (UCITA). AFFECT, the anti-UCITA coalition that ALA helped to found and continues to lead, since has published its *12 Principles for Fair Commerce in Software and Other Digital Products*. www.fairterms.org. The Principles outline 12 fair terms that should be included in shrink-wrap licenses for software and other digital products. The following Principle speaks directly to the needs of libraries:

> Customers are entitled to fair use, including library or classroom use, of digital products to the extent permitted by federal copyright law.
> Consumers, businesses, libraries and educational institutions rely on "off-the-shelf" digital products. For 200 years, federal copyright law has carefully developed balanced rules for the use of copyrighted information. Terms in agreements for mass-market digital products should not attempt to prohibit activities otherwise permitted under federal copyright law. For example, journalists and scholars should be able to quote language in mass-market digital content products and libraries should be able to lend this type of material. To avoid inhibiting important fair uses, terms claiming to restrict them should not be used.

These Principles (endorsed by ALA Council – see attached resolution) are helpful as we continue to work with legislators and other policymakers on related issues.

7. Conclusion

President George Washington said to Congress in a message that led to the first Copyright Act in 1790: "Knowledge is, in every country, the surest basis of public happiness." James Madison talked and wrote about information as the "currency of democracy." Without an informed citizenry, a democracy cannot function.

We take it for granted that this is a true principle. And we take it for granted that our libraries -- in the elementary schools, in our towns, in our colleges and universities, in our businesses -- will provide us with books and artwork and maps and music and government documents and computer connections. We cannot take it for granted that we will be able to carry out our mission unless we vigilantly protect the balance of copyright.

Prepared by:
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March 23, 2007

ALA POSITION STATEMENT ON COPYRIGHT

The Council of the American Library Association, on January 11, 1968, adopted the following Resolution:

RESOLVED, That the ALA support the National Commission to be created by S. 2216; and

RESOLVED, FURTHER, That the ALA strongly urge that the copyright revision bill be amended to provide that such of its terms as relate to any copyright usage under study by the National Commission shall not become effective until the Commission has made its report and the recommendations contained therein have been acted upon by the Congress.

The ALA believes that its position represents a reasonable compromise of the interests of all parties concerned with the passage of the Copyright Revision Bill.

The ALA is firmly of the opinion that changes in the present copyright law (Act of 1909) governing matters under study by the proposed National Commission on New Technological Uses of Copyrighted Works, should await the results of such study and should be predicated on such results. In this connection, the ALA is of the opinion that the National Commission should include in its study computer uses, photocopying, and display (including telefacsimile) of copyrighted works.

Amendment of the Copyright Revision Bill in accordance with the ALA position would permit the passage of such Bill, but would guarantee the legal status quo in respect of any copyright issues under study by the National Commission. It would deprive neither the copyright owners nor the users of copyright works of any of the legal rights and responsibilities they now have; nor would it prejudice the interests of any of the parties by prejudging the findings of the National Commission.

The ALA position would leave unresolved for the period the Commission requires to report and the Congress to act, those issues which the National Commission is created to resolve. Even this slight burden, however, is mitigated by the opportunity for those interests, too impatient to await legislative clarification, to resolve the issues by litigation. At the same time, the promise of legislative clarification should discourage litigation involving close questions of statutory interpretation and intent.

The Amendment proposed by the ALA would permit the copyright law to develop in an orderly and enlightened manner. More important, however, it would prevent the Congress from adopting legislation which could result in serious delays and irreparable damage to technological advance and innovation. The Association believes that any inadequacy in the protection afforded copyright owners under the present copyright laws is vastly outweighed by the dangers inherent in the possible adoption of an erroneous legislative solution to complex problems of far-reaching implications for education, the public, and the nation.

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March 19, 1968

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ALA American Library Association

RESOLUTION ON LANDMARK DIGITAL COPYRIGHT LEGISLATION

Whereas, each year millions of researchers, students, and members of the public benefit from access to library collections -- access facilitated by Copyright Act provisions supporting fair use, preservation of library materials, interlibrary loan, and similar user privileges; and

Whereas, two copyright bills pending before Congress, Senator John Ashcroft's Digital Copyright Clarification and Technology Act (S. 1146) and the Digital Era Copyright Enhancement Act introduced by Representatives Rick Boucher and Tom Campbell (H.R. 3048) would ensure that the Copyright Act continues to serve the public who rely upon these collections and services; and

Whereas, S. 1146 and H.R. 3048 seek to update the Copyright Act of 1976 by reaffirming the current balance in the law so that owners, creators, and users alike may benefit fully from the opportunities of the digital environment; and

Whereas, this legislation appropriately extends that balance by clarifying or updating for the digital environment selected privileges granted to libraries, researchers, educational institutions and others under current law; now, therefore, be it

Resolved, that the American Library Association commend Senator John Ashcroft (R-MO), Representative Rick Boucher (D-VA), and Representative Tom Campbell (R-CA) for their farsightedness in introducing this landmark legislation; and be it further

Resolved, that the American Library Association endorse in principle S. 1146 and H.R. 3048, and urge Congress to enact the provisions in these bills so that libraries and educational institutions may continue to effectively serve the nation in the information age.

Adopted by the Council of the
American Library Association
New Orleans, LA
January 14, 1998
(Councile Document 2002)

RESOLUTION ON COPYRIGHT FIVE-YEAR REVIEW

WHEREAS, Section 108(i) of the Copyright Act of 1976 (PL 94-553) calls upon the Register of Copyrights to conduct a review by 1983 to determine whether the Act has achieved the intended statutory balancing of the rights of creators and users, and the statute expressly provides that representatives of library users and librarians should participate in the five-year review; and

WHEREAS, Libraries are particularly concerned that the rights of the creative members of our society are advanced equally with the rights of the public to have available the works they create; and

WHEREAS, Libraries are both major purchasers of these works and a primary source of access to them for millions of Americans; now

THEREFORE BE IT RESOLVED, That ALA call upon the Register to consult the interested parties at her earliest convenience in order to determine the data needed for an effective five-year review; and

BE IT FURTHER RESOLVED, That the five-year review should include but not be limited to the impact of the law on users of all sizes and types of libraries and information centers, the numbers and types of materials published, and on the ability of authors to retain rights in their own works and receive renumeration for them; and

BE IT FURTHER RESOLVED, That the review include an assessment of the copyright clearance centers, and other clearance mechanisms, including permissions, purchase contracts, payment schedules, and special consideration of educational copying, plus the purchase of separates in lieu of reproduction, to determine what improvements or additional services may be needed to make copyrighted materials easily accessible to the public; and

BE IT FURTHER RESOLVED, That the Register be encouraged to broaden the context of the review to consider all methods of communicating, reproducing and disseminating the written word, including microforms, computers, and video; and

BE IT FURTHER RESOLVED, That ALA offer its support to the Register of Copyrights including advice, resources, and research capability in developing some of the data needed for the five-year review.

Adopted by the Council of the
American Library Association
Chicago, June 29, 1978

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ALA American Library Association

RESOLUTION IN SUPPORT OF THE VITALITY OF FAIR USE IN THE DIGITAL AGE

Whereas, the Congress of the United States is now actively debating legislation intended to implement intellectual property treaties negotiated in December of 1996 under the auspices of the World Intellectual Property Organization (WIPO); and

Whereas, the Preamble of such treaties makes clear that they are intended both to protect intellectual property and respect "the larger public interest, including access to information;" and

Whereas, such treaties expressly permit all signatory nations both to extend existing limitations on and exceptions to the rights of information proprietors into the digital environment, and to create such new exceptions and limitations not inconsistent with existing international law as may be deemed appropriate; and

Whereas, libraries' respect for the rights of copyright holders is strongly evidenced, in part, by their purchase of more than $2 billion of copyrighted materials annually; and

Whereas, libraries are equally committed to the continued ability of their patrons to make "fair use" of such material, and of the public at large to make "fair" and other lawful use of copyrighted works; and

Whereas, the American Library Association has previously endorsed modification of the nation's Copyright Act in a manner which reaffirms the balance now existing in statute between protecting information and affording access to it so that owners, creators, and users of information alike may benefit fully from the opportunities of the digital environment; now, therefore, be it

Resolved, that the American Library Association remain committed to working closely and cooperatively with Members of Congress and their staffs, and representatives of all affected industries and constituencies, in pursuit of WIPO treaty implementation legislation which, in equal measure, protects copyrighted information and permits its continued fair and other lawful use in the digital environment to no less an extent than that permitted under current law.

Adopted by the Council of the
American Library Association
Washington, DC
July 1, 1998
(Council Document 20.6)

RESOLUTION ON THE IMPORTANCE OF FAIR USE IN THE DIGITAL AGE

WHEREAS, The United States Constitution and 200 years of copyright law recognize that libraries are essential to the progress of science, education and the arts in our democracy; and

WHEREAS, Effective copyright law relies upon a balance between the rights of creators and the rights of the public to have access to works; and

WHEREAS, The term "Fair Use" has come to embody the exceptions and limitations in copyright law for libraries and their users (such as first sale, preservation, limits on terms of copyright, access to public domain information, and distance learning); and

WHEREAS, Fair Use is the cornerstone of equal access to information; and

WHEREAS, Libraries are committed to information equity for all people; and

WHEREAS, Actions in a number of venues are threatening the public's ability to exercise Fair Use; now, therefore be it

RESOLVED, That the American Library Association reaffirm the ongoing importance of Fair Use in the digital age; and be it further

RESOLVED, That the American Library Association continue its vigorous support for the principles of Fair Use; and be it further

RESOLVED, That the American Library Association work to articulate the tenets of Fair Use in any legislation that affects copyright and intellectual property law; and be it further

RESOLVED, That the American Library Association provide profession-wide leadership in the development and advancement of principles, policies and political strategies to promote Fair Use; and be it further

RESOLVED, That the American Library Association persevere as an advocate for the continued equitable balance between the rights of creators and other copyright holders and the needs of the public; and be it further

RESOLVED, That the American Library Association transmit copies of this resolution to appropriate committees of the House and Senate, to the U.S. Copyright Office and to the Administration.

Sponsored by: Committee on Legislation
Endorsed by: Office for Information Technology Policy Advisory Committee
Office for Information Technology Policy Copyright Committee

Endorsed in principle by: ACRL Copyright Committee
Intellectual Freedom Committee

Policy: #51.4

Prior History: CD 20.6, July 1, 1998
CD 20.10, February 8, 1995

WASHINGTON OFFICE

AMERICAN LIBRARY ASSOCIATION

110 MARYLAND AVENUE, N.E. • WASHINGTON, D.C. 20002 • (202) 547-4440

RESOLUTION ON "FAIR USE" OF UNPUBLISHED SOURCES

WHEREAS, Libraries and their users are beneficiaries of the scholarship of biographers, literary critics, historians and others; and

WHEREAS, The canons of scholarly research require that serious and responsible researchers draw upon and quote from unpublished primary source materials; and

WHEREAS, The constitutional mandate to create copyright laws represents a careful balance between the rights of authors, publishers, and the public; and

WHEREAS, That mandate and those laws encourage free and open expression and the fullest possible public access to that expression; and

WHEREAS, The freedom of scholars to use quotations from unpublished primary sources is in serious jeopardy; and

WHEREAS, Recent rulings of the U. S. Second Circuit Court have had an inhibiting effect on many forms of research which are of ultimate benefit to libraries and their patrons and have made it legally difficult to quote even limited amounts of unpublished materials without obtaining authorization or consent; and

WHEREAS, A "fair use" doctrine for unpublished materials is needed to balance both the protection of copyright for authors and the encouragement of research by scholars; and

WHEREAS, Representative Robert Kastenmeier and Senator Paul Simon have introduced legislation (HR 4263 and S. 2370) that would clarify the "fair use" of quotations of unpublished materials; now, therefore, be it

RESOLVED, That the American Library Association express its support and urge Congress to enact legislation which would eliminate the distinction between published and unpublished materials with regard to the fair use of quotations; and, be it further

RESOLVED, That copies of this resolution be transmitted to the Judiciary Committee of both houses of Congress.

Adopted by the Council of the
American Library Association
Chicago, Illinois
June 26, 1990
(Council Document #93)

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RESOLUTION ON INTELLECTUAL PROPERTY PRINCIPLES

WHEREAS, The American Library Association recognizes that copyright exists for the public good; and

WHEREAS, Fair use, the library, and other relevant provisions of the Copyright Act of 1976 must be preserved in the development of the emerging information infrastructure; and

WHEREAS, Libraries and archives, as trustees of human knowledge, must have full use of technology in order to preserve research and scholarship; and

WHEREAS, Licensing agreements should not surrender the rights of libraries and the public, such as fair use, guaranteed in the U.S. Copyright Act of 1976; and

WHEREAS, Librarians have a responsibility to educate the users of libraries about their rights and responsibilities under intellectual property law; and

WHEREAS, Copyright should not be applied to works of the U.S. government; and

WHEREAS, The information infrastructure must permit authors to be compensated for the success of their creative works, and copyright owners must have an opportunity for a fair return on their investment; and

WHEREAS, The Association of Research Libraries Statement of Intellectual Property Principles of May 1994, are consistent with the Principles for the Development of the National Information Infrastructure supported by ALA on February 9, 1994; now, therefore, be it

RESOLVED, That the American Library Association support the Association of Research Libraries' statement of Intellectual Property Principles; and, be it further

RESOLVED, That the American Library Association work with the library community, the Administration, Congress, publishers, and developers of new media to make these Principles work in the implementation of the National Information Infrastructure.

Adopted by the Council of the
American Library Association
Miami, Florida
June 29, 1994
(Council Document 21.12)

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ALA American Library Association

RESOLUTION ON ENDORSEMENT OF "BASIC PRINCIPLES FOR MANAGING INTELLECTUAL PROPERTY IN THE DIGITAL ENVIRONMENT"

WHEREAS, The American Library Association is committed to domestic and international intellectual property policy that reflects and fosters a balance between the economic interests of intellectual property proprietors and the larger public interest in access to information; and

WHEREAS, In pursuit of such balance, the American Library Association and its members remain dedicated to collaborating with other members of the educational, scholarly, research, scientific and other communities; and

WHEREAS, The National Humanities Alliance, in concert with 14 other national organizations representing such communities, has jointly authored a document known as "Basic Principles for Managing Intellectual Property in the Digital Environment" (hereafter, the "Basic IP Principles") based upon earlier work by the University of California; and

WHEREAS, The "Basic IP Principles" comport with and well reflect the American Library Association's own principles and objectives with respect to intellectual property policy and related practice; now, therefore, be it

RESOLVED, That the American Library Association endorses, and hereby requests that its name be associated with the "Basic IP Principles"; and, be it further

RESOLVED, That the American Library Association actively disseminate, and encourage others to broadly distribute, the "Basic IP Principles" to libraries and librarians in the United States and abroad; and, be it further

RESOLVED, That the "Basic IP Principles" be forwarded to or otherwise presented at appropriate opportunities to domestic and international intellectual property policy makers and authorities; and, be it further

RESOLVED, That the American Library Association commends the National Humanities Alliance, the University of California and the other organizations for their valuable work in pursuit of a balanced global intellectual property legal regime.

Adopted by the Council of the
American Library Association
San Francisco, CA
July 2, 1997
(Council Document 20.9)

2003-2004 CD #20.1
2004 ALA Midwinter Meeting

RESOLUTION IN OPPOSITION TO H.R. 3261, DATABASE AND COLLECTIONS OF INFORMATION MISAPPROPRIATION ACT

WHEREAS, The Subcommittee on Courts, the Internet and Intellectual Property of the House Judiciary Committee has introduced H.R. 3261, the Database And Collections Of Information Misappropriation Act; and

WHEREAS, H.R. 3261 would reverse the basic information policy of this country that facts are not creative in nature and cannot be owned; and

WHEREAS, H.R. 3261 seeks to protect commercial databases from piracy, but does not allow for legitimate future value-added uses of covered data; and

WHEREAS, H.R. 3261 fails to make clear that government information, including government information contained in commercial databases, is already paid for by the public and should remain in the public domain; and

WHEREAS, H.R. 3261 will harm legitimate business, research and education activities and will threaten the fair use of information; now, therefore be it

RESOLVED, that the American Library Association opposes H.R. 3261, the Database and Collections of Information Misappropriation Act; and encourages its members to ask their legislators to oppose H.R. 3261.

Initiated by: COL Intellectual Property and Technology subcommittee, 1/10/04
Policy: #51.4
Prior History: CD#20.8, 6/30/99

2004-2005 CD #20.4
ALA Midwinter Meeting
January 19, 2005

RESOLUTION IN SUPPORT OF THE "STOP BEFORE YOU CLICK" CAMPAIGN

WHEREAS, The American Library Association is a founding member of the Americans for Fair Electronic Commerce Transactions (AFFECT), a national coalition of consumers, retail and manufacturing businesses, financial institutions, technology professionals and librarians committed to the growth of fair and competitive U. S. markets in software and other digital products;

WHEREAS, AFFECT and ALA have been instrumental in helping to prevent the passage of UCITA (Uniform Computer Information Transactions Act), dangerous, anti-competitive, anti-business, anti-consumer legislation;

WHEREAS, Vendors nevertheless continue to impose extreme terms for mass-market digital products which erode customer rights, chill innovation and legitimate uses (including fair use), restrict competition and increase risk to computer integrity and security for both individuals and businesses;

WHEREAS, The American Library Association wishes to ensure that libraries are able to make legitimate uses of the products they buy, maintain their computers' reliability and security, and prevent invasion of the privacy of their users; and

WHEREAS, Fairness in these digital transactions -- the terms of which may not even be available until the transaction has been completed -- has become a pressing public policy concern; and

WHEREAS, AFFECT has undertaken an outreach campaign called STOP BEFORE YOU CLICK to promote fair business practices and to guide sellers, users of digital products and policymakers in developing balanced law(s) to govern purchases of off-the-shelf software and digital products;

WHEREAS, The cornerstone of AFFECT's efforts is the "12 Principles for Fair Commerce in Software and Other Digital Products"; now, therefore, be it

RESOLVED, That the American Library Association shall endorse STOP BEFORE YOU CLICK's "12 Principles for Fair Commerce in Software and Other Digital Products"; and be it further

RESOLVED, That the American Library Association shall encourage its members to implement the "12 Principles for Fair Commerce in Software and Other Digital Products" in their licensing review, purchasing and negotiation practices; and, be it further

RESOLVED, That the American Library Association will share this resolution with the other U.S. library associations.

Adopted by the Committee on Legislation, January 17, 2005
Endorsed by: ACRL Copyright Committee
Endorsed by: OITP Copyright Committee
Endorsed in principle by IFC, January 17, 2005:

Policy: 53.8

Prior History: CD# 20.6, July 1998
CD# 20.4, January 2001

2006 CD #20.6
ALA Midwinter Meeting
January 25, 2006

RESOLUTION IN OPPOSITION TO "SUI GENERIS" DATABASE PROTECTION

WHEREAS, The European Commission has published an evaluation of its 1996 Database Directive (Directive 96/9/EC), which gave a novel form of "sui generis" legal protection to databases even if they are not sufficiently original to be copyrighted; and

WHEREAS, The European Commission's evaluation concludes that there is no evidence that the Database Directive has achieved its goal of stimulating the production of databases in Europe; and

WHEREAS, The European Commission's evaluation recognizes that the "sui generis" protection for databases has given rise to legal uncertainty and to significant litigation in European courts and the courts of its member countries; and

WHEREAS, The European Commission's evaluation acknowledges that the "sui generis" protection for databases may harm legitimate business, research and education activities and threaten the fair use of information, including information in the public domain; and

WHEREAS, The European Commission has invited stakeholders, by March 12, 2006, to submit their views and comments and to provide further evidence on the economic impact of "sui generis" protection in stimulating the production of European databases; and

WHEREAS, The American Library Association has consistently opposed, and will continue to oppose, database protection legislation in the United States and elsewhere because such protection significantly restricts access to information and adversely affects the advancement of knowledge throughout the world; now, therefore be it

RESOLVED, that the American Library Association urges the European Commission either to repeal its Database Directive or to withdraw the "sui generis" right while maintaining copyright protection for "original" databases.

Initiated by: COL [and IRC]
Policy: #51 and #50.3
Prior History: CD#20.1, Jan. 2004; CD#20.8, July 2004
Endorsed in principle by: Legislation Assembly; ACRL Copyright Committee; OITP Advisory Committee

Library Copyright Alliance

www.LibraryCopyrightAlliance.org

American Association of Law Libraries | ALA American Library Association | Association of Research Libraries | MLA Medical Library Association | SLA Connecting People and Information

Library-Related Principles* for the International Development Agenda of the World Intellectual Property Organization

Goal 1: A robust and growing public domain to provide new opportunities for creativity, research, and scholarship.

1.1. All works created by governmental authorities should be in the public domain.
1.2. Published works resulting from government-funded research should be publicly available at no charge within a reasonable time frame.
1.3. Facts and other public domain materials, and works lacking in creativity, should not be subject to copyright or copyright-like protections.
1.4. Consistent with the Berne Convention, the term of copyright should be the life of the author plus 50 years. The term of copyright should not be extended retroactively.

Goal 2: Effective library programs and services as a means of advancing knowledge.

2.1. A library may make copies of published and unpublished works in its collection for purposes of preservation or to migrate content to a new format.
2.2. A work that has been lawfully acquired by a library may be lent to others without further transaction fees to be paid by the library.
2.3. A work that has been lawfully acquired by a library or other educational institution may be made available over a network in support of classroom teaching or distance education in a manner that does not unreasonably prejudice the rights holder.
2.4. Subject to appropriate limitations, a library or educational institution may make copies of a work in support of classroom teaching.
2.5. A library may convert material from one format to another to make it accessible to persons with disabilities.
2.6. In support of preservation, education or research, libraries and educational institutions may make copies of works still in copyright but not currently the subject of commercial exploitation.

Goal 3: High levels of creativity and technological progress resulting from individual research and study.

3.1. Copyright laws should not inhibit the development of technology where the technology in question has substantial non-infringing uses.
3.2. Copying of individual items for or by individual users should be permitted for personal research and study.
3.3. It should be permissible to circumvent a technological protection measure for the purpose of making a non-infringing use of a work.

Goal 4: Harmonization of copyright.

4.1 The goals and policies set out in this document should not be over-ridden by other bi-lateral or multi-lateral agreements.
4.2 The goals and policies set out in this document are important statements of national and international principle and should not be varied by contract.

January 26, 2005

The foregoing principles were developed in December 2004 and were initially endorsed by the following library associations: American Association of Law Libraries, American Library Association, Association of Research Libraries, International Federation of Library Associations and Institutions, Medical Library Association, and the Special Libraries Association. These principles were prepared for use in discussions at the World Intellectual Property Organization concerning the impact of intellectual property protection on economic development and the significance of copyright exceptions for libraries, educational institutions, and the disabled. These principles are not intended to serve as statutory language and thus do not reflect limitations and qualifications that would appear in such language.

To see the complete list of endorsers, including international library groups: www.librarycopyrightalliance.org/endorsers.htm

If you have questions regarding this statement, please contact Prue Adler, prue@arl.org, Bob Oakley, Oakley@georgetown.law.edu, Miriam Nisbet, mnisbet@alawash.org, Carla Funk, funk@mlahq.org, and/or Doug Newcomb., dnewcomb@sla.org.

2006-2007 CD #20.1
ALA Midwinter Meeting

RESOLUTION IN SUPPORT OF "ORPHAN WORKS" LEGISLATION

WHEREAS, The inability to locate copyright owners to clear the rights in their works prevents libraries and other cultural institutions from providing access to the information in their collections and prevents library users from making transformative uses of those works; and

WHEREAS, It is preferable to find the copyright owner; nevertheless, it is critical to the advancement of science and useful arts to be able to use and preserve works whose owners are not known or cannot be located ("orphan works")"; and

WHEREAS, The US Copyright Office has identified practical and effective ways to amend the Copyright Act better to facilitate the uses of orphan works; and

WHEREAS, Librarians, archivists, scholars, historians, and curators have testified that such an amendment would improve their work, as well as the work of individual artists, writers, musicians and filmmakers, all of whom struggle to balance the rights of missing or unidentifiable copyright holders with the mission of making letters, manuscripts, photographs and other culturally significant material available to the public; and

WHEREAS, Congress has recognized in recent oversight hearings that loss of access to and use of orphan works is not in the public interest and that amendment of the law in this regard would benefit the intellectual, historical and cultural life of all Americans; now, therefore, be it

RESOLVED, That the American Library Association urges Members of the US Senate and the US House of Representatives to introduce legislation to amend the Copyright Act to facilitate the use of "orphan works" if the user has made a reasonably diligent, good faith search to locate the owner of the work but was unable to find the owner.

Initiated by: COL
Endorsed by: Intellectual Freedom Committee
Endorsed in principle by: OITP Advisory Committee and ACRL
ALA Policy: #50.15 Principles for the Networked World
#51.(4) Federal Legislative Policy
Prior History: 2000-01 CD #20.4

Adopted by the American Library Association Council
Wednesday, January 24, 2007
Seattle, Washington