

April 24, 2006

Mary Rasenberger  
Policy Advisor for Special Programs  
U.S. Copyright Office

Dear Ms. Rasenberger:

Based on discussions during the Los Angeles, CA and Washington, D.C. roundtables, the Association of Research Libraries (ARL) and the American Library Association (ALA) submit the following additional comments on the Section 108 Study Group efforts. Please find attached the earlier submission of February 22, 2006.

**Eligibility for Section 108 Exceptions.**

ARL and ALA support the extension of section 108 to include museums and other cultural institutions. These institutions engage in important activities relating to our Nation's historical, scientific and cultural heritage. Libraries often partner with these institutions and they should be eligible for section 108 privileges.

**Virtual Collections and Libraries.**

Libraries are devoting significant resources and expertise to the development of virtual collections. This emphasis reflects the changing media, the demands and interests of our user communities and the new realities of learning, research and teaching applications. Given the nature of the new media, virtual libraries and collections are inherently different than those of the analog environment. Care will need to be taken to ensure that virtual libraries are not made to "look" like our physical collections thus impairing their utility to users.

**New Exemption for Preservation Only.**

There is great value to creators, owners and users of information resources in allowing cultural institutions to proactively preserve digital resources. First, most creators and owners of these works do not engage in their long-term preservation. If it were not for libraries and other cultural institutions, these resources would not be accessible to future generations. Given the complexity and scale of what is required, these efforts will require extensive cooperation by creators, owners and cultural institutions.

Second, institutions that engage in the preservation of digital resources devote a very high level of resources to these efforts. Incentives to undertake these efforts may be needed as they pose difficult and complex challenges.

Third, by allowing these cultural institutions to preemptively preserve digital resources, it will be important to place as few restrictions as possible on the making of copies of them. More complex restrictions may be considered for the *use and accessibility* of these resources. For example, access could be limited to

administrative access to insure persistence, integrity and accuracy over time. Digital information, by its very nature, is inherently at risk.

Fourth, if cultural institutions are permitted to proactively preserve digital resources, these institutions should also be able to migrate these resources to new and evolving platforms.

### **Web Archiving.**

As mentioned previously, libraries and other cultural institutions should be permitted to archive websites and other online content. There is tremendous social value in capturing commercial and freely available websites for use by future generations. It is critically important that our cultural and historical representations are available in the future.

Second, limitations should not be placed on unrestricted publicly available content. If websites are publicly available today with no restrictions, it makes no sense to impose limitations such as placing them in a restricted archive. The default should be that libraries and other cultural organizations may capture and preserve these websites, and that they are open and available for access by users. For those websites that include copyrighted information, it is important to ensure that these resources are preserved until the time when copyright term expires and these resources become public domain materials.

Third, in capturing and preserving websites, it will be important for libraries and cultural institutions to also have access to the underlying software. This may include javascript and stylesheets in order to render a page.

Finally, as was noted in the Washington, D.C. roundtable, the scale and complexity of capturing and preserving websites is high. It is precisely because of this complexity that many institutions should be able to capture and preserve the World Wide Web. It will entail many institutions with differing expertise and a variety of approaches as we learn and develop best practices. In addition, some libraries may want to capture and preserve one or more subject areas. This is consistent with long-standing collections policies of our institutions.

In closing, several publishers raised the issue of **state sovereign immunity** during the Washington roundtable discussions. The concerns relating to state sovereign immunity are complex and apply far more broadly than to the issue of updating section 108. ARL and ALA believe strongly that this is not the appropriate venue for addressing state sovereign immunity issues.

Please let me know if there is additional information that we can provide.

Sincerely,

Prudence S. Adler  
Association of Research Libraries

Emily Sheketoff  
American Library Association

Attachment: February 22, 2006 ARL/ALA letter to M. Rasenberger