



May 1, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Orrin Hatch
U.S. Senate
SH-104 Hart Senate Office Building
Washington, DC 20510-4402

Re: S. 2913

Dear Chairman Leahy and Senator Hatch:

The Library Copyright Alliance (LCA) consists of five major library associations: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. These five associations collectively represent over 139,000 libraries in the United States employing 350,000 librarians and other personnel. These five associations participate in the LCA to address copyright issues that have a significant effect on the information services libraries provide to their users. The LCA's mission is to foster global access to information for creative, research, and educational uses.

We write to express our appreciation for your introduction of S. 2913, which limits remedies in copyright infringement cases involving orphan works. We look forward to working with you and your staffs to fashion an effective framework that will encourage socially productive uses of culturally and historically significant works whose copyright owners cannot be identified or located. However, as the Committee begins considering this legislation, we wish to state in unequivocal terms our opposition to the notice of use filing (the so-called "dark archive") proposed in the House version of this legislation, H.R. 5889. As we discuss below in greater detail, the requirement of such a filing will dramatically limit the utility of the legislation.

The special collections in our libraries, museums, state and local historical societies, and archives include significant amounts of orphan works. These repositories with orphan works are not being made publicly available for fear of copyright owners coming forward and demanding unknown amounts of compensation. Despite extensive and costly searches to locate orphan work owners, without a legislative solution, the risk remains too high for our institutions to make these works publicly available.

Resolving the orphan works problem presents significant new educational opportunities because these works will be publicly accessible and available to students, scholars, and the public. Access to

these resources supports and inspires new scholarship by making the works of previous generations more accessible and useful to current users.

We are encouraged that you have introduced S. 2913 to address this issue, and that a mark-up has been scheduled for next week. We have submitted proposed amendments to your staff, and hope that we will be able to support enactment of an amended bill.

At the same time, we strongly urge that you reject inclusion of the “dark archive” provisions contained in the House bill, H.R. 5889. The dark archive’s requirements will be excessively burdensome for users, with little benefit to owners. Mandating that users file a notice of use with a government agency will drive up compliance costs significantly. Many institutions will require legal counsel to review the submissions prior to filing.

Moreover, H.R. 5889 appears to require a separate notice for each work used, presumably with a separate filing fee. Such a requirement will put the orphan works limitation beyond the reach of cultural institutions engaged in mass digitization projects. Even if users could include multiple works in one notice, the requirement of drafting a narrative summary of each search could be cost prohibitive. Also, a library’s desire to keep costs down by aggregating multiple works into one notice will cause the library to delay placing digitized works online, which will then result in the search not being proximate to the use, as required by the bill.

At the same time, S. 2913 contains provisions on specific pleading and disclosure of search information in the early stages of pretrial discovery, which are well tailored to provide against any risk of abuse by users. In sum, the dark archive will provide no additional protection to owners, but impose costs so great on noncommercial users that they simply will not employ the orphan works provision. For this reason, the LCA will not support any orphan works bill that includes a notice of use provision.

Thank you for your continued leadership on the orphan works problem. We look forward to working with the Committee members and their staffs so that orphan works legislation can be enacted this Congress.

Sincerely,



Prudence S. Adler
Associate Executive Director,
Federal Relations and Information Policy
Association of Research Libraries

On behalf of the Library Copyright Alliance: the American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, and the Special Libraries Association (contact information for each association is attached).



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy. <http://www.aall.org/>
Contact: Mary Alice Baish (202-662-9200)



The American Library Association (ALA) is a nonprofit educational organization of over 65,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society. <http://www.ala.org/>
Contact: Lynne Bradley (202-628-8410)



Association of Research Libraries

The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the diverse communities they serve. ARL pursues this mission by advancing the goals of its member research libraries, providing leadership in public and information policy to the scholarly and higher education communities, fostering the exchange of ideas and expertise, and shaping a future environment that leverages its interests with those of allied organizations. <http://www.arl.org/>
Contact: Prudence S. Adler (202-296-2296)



The Medical Library Association (MLA), a nonprofit, educational organization, is a leading advocate for health sciences information professionals with more than 4,700 members worldwide. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public. <http://www.mlanet.org/>
Contact: Carla Funk (312-419-9094 x.14)



The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 11,000 members in 70 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives. <http://www.sla.org/>
Contact: Doug Newcomb (703-647-4923)