

Copyright reform and Orphan Works

The Library Copyright Alliance (LCA), comprised of ALA, ACRL, and the Association of Research Libraries (ARL), issued a statement May 16, 2011, describing the key features copyright reform proposals should include in order to constitute significant improvement over current law for libraries and their users.

According to LCA, the Google Books settlement rejection by Judge Denny Chin of the Southern District of New York on March 22 ignited vigorous discussion of orphan works, mass digitization, and even modernization of Section 108 of the U.S. Copyright Act. Orphan works are works whose copyright holders cannot be identified or found, and are not made publicly available by libraries for fear that rights holders will come forward, initiate legal action, and demand statutory damages of up to \$150,000 a work.

LCA, which represents the needs of library stakeholders in these debates, released its statement to provide helpful guideposts for these discussions.

Primarily, the statement underscores how libraries have always advocated for reasonable copyright policy in the courts as well as in the U.S. Congress. Library activities already benefit from broad, flexible protection under the fair use doctrine and related provisions in current law.

Excerpts from the statement are below. To view the entire document, go to www.librarycopyrightalliance.org/bm~doc/lca_copyrightreformstatement_16may11.pdf.

... Congress and the affected stakeholders have been unable to reach consensus on these [copyright law] issues for many reasons: the issues are complex, there are many stakeholders; their interests diverge significantly; and some oppose any

change to the status quo. Accordingly, it is important to recognize that achieving a legislative solution to any of these issues will be difficult, if not impossible.

...The orphan works bill [S. 2913] passed by the Senate in the 110th Congress would have provided little practical relief to libraries with respect to large scale digitization projects.... Thus, S. 2913 as passed by the Senate should not represent the starting point for discussion of orphan works legislation, at least with respect to libraries. Instead, orphan works legislation for libraries should begin with a clean slate.

In addition, LCA would support an effort to amend the Copyright Act to benefit libraries only if it offered significant benefits over the status quo. Thus, a proposal must contain the following features:

- The noncommercial use by a nonprofit library or archives of a work when it possesses a copy of that work in its collection:
 - would not be subject to statutory damages;
 - would not be subject to actual damages if the use ceases when the library or archives receives an objection from the copyright owner of the work; and
 - would be subject to injunctive relief only to the extent that the use continues after the library or archives receives an objection from the copyright holder of the work.
- The limitation on remedies would apply to the employees of libraries or archives, as well as to a consortium that includes the library or archives.
- Copyright owner objections would have no effect on a library's rights under fair use.

At this time, orphan works legislation has not been introduced in the 112th Congress. ➤