

October 16, 2009

DOCKET NO.
RM 2009-3
REPLY
COMMENT NO. 3

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**BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS**

**IN THE MATTER OF MANDATORY DEPOSIT OF PUBLISHED
ELECTRONIC WORKS AVAILABLE ONLY ONLINE**

Docket No. RM 2009-3

**REPLY COMMENTS OF THE ASSOCIATION OF RESEARCH LIBRARIES
AND THE AMERICAN LIBRARY ASSOCIATION**

Pursuant to the Notice of Proposed Rulemaking (NPRM) published by the Copyright Office in the *Federal Register* on July 15, 2009, the Association of Research Libraries (ARL) and the American Library Association (ALA) submit the following reply comments regarding certain concerns raised in initial comments from the Association of American Publishers (AAP) and the Software and Information Industry Association (SIIA). We believe the AAP and SIIA comments misunderstand the long-standing mission of the Library of Congress (the Library) “to make its resources available and useful to the Congress and the American people.”¹

AAP and SIIA’s Concerns

In their comments, AAP and SIIA raise concerns about user access to deposited materials. AAP worries that “unauthorized or expansive access” could lead to “market harm” for its members. SIIA warns that if access to materials obtained through the new deposit rule were to be offered beyond the physical site of the Library itself, or if access were provided to more than two readers at a time, then its members’ “overall concerns ... would be significantly heightened.” Both groups urge the Office to publish detailed rules limiting access to and use of the materials deposited pursuant to any new policy.

AAP and SIIA’s concerns are unfounded, and their request is at best premature. Indeed, the Library has already proposed an access policy that ALA and ARL believe to be highly restrictive. The real danger lies in hastily imposing artificial barriers on legitimate access to Library materials.

The Mission of the Library of Congress

Mandatory deposit has gone hand-in-hand with copyright protection since the very first federal copyright statute, the Copyright Act of 1790. Since the Library took responsibility for the registration and deposit of copyrighted works in 1870, it has strived to fulfill the vision of then-Librarian of Congress Ainsworth Spofford that the Library would collect, preserve, and make available works that constitute America’s cultural heritage. Now, as the Office points out in its NPRM, the Library is the world’s largest repository of knowledge and creativity, thanks in large part to materials acquired by mandatory

¹ See About the Library, <http://www.loc.gov/about/> (last visited October 7, 2009).

deposit. The Library serves members of Congress and their staff, but it also serves the American public and researchers from all over the world. The Library was never meant to be nor has it ever been a “dark archive.”

The Library should have flexibility in deciding how it chooses to fulfill its mission, and should not have an entire category of deposits (one that is likely to grow) prematurely and artificially locked behind unnecessary, rigid access restrictions.

Any Limitations Should Be Unique to the Library of Congress

The NPRM states that the Library intends voluntarily to limit access to materials received pursuant to this new proposed rule to no more than two simultaneous, on-site users (and presumably will not allow users to download materials). As ARL and ALA previously stated in comments, ARL and ALA understand that the Library may choose to follow this policy because of its unique status as the recipient of works submitted pursuant to mandatory deposit requirements.

ARL and ALA reiterate that this voluntary policy of limited access is unique to the Library of Congress, and should not set a precedent of limited access for other libraries with respect to their digital collections. Services of all kinds are increasingly provided online; imposing artificial limits on libraries’ use of evolving information technologies to serve their communities in ways that are relevant to them would be contrary to the public interest.