

March 31, 2000

Mr. David O. Carson
General Counsel
United States Copyright Office
LM403
James Madison Memorial Building
101 Independence Ave., SW
Washington, D.C. 20024

Dear Mr. Carson:

Please find below the comments of the National Agricultural Library in reply to initial filings concerning Section 1201 (a) of the Digital Millennium Copyright Act.

**National Agricultural Library
Reply Comment Concerning
Section 1201(a), Digital Millennium Copyright Act**

The National Agricultural Library staff have reviewed initial filings concerning Section 1201(a) of the Digital Millennium Copyright Act. We are concerned at the position of some content owners that the statute imposes no present adverse impact on fair use, scholarship or learning, and none that can be foreseen. To the contrary, we believe that serious present and foreseeable adverse effects exist that constitute major impediments to the continued execution of our mandated functions in support of scholarship and learning.

We have already experienced situations in which digital versions of works, for example those published on CD-ROM, magnetic tapes, or diskettes, have become impossible to access via the technological access mechanism imposed at the time the work was created. This has happened because software and/or equipment required to unblock the access mechanism may no longer be available and/or because the digital medium has deteriorated, become obsolete, or been damaged. In such cases, for the information contained in the work to be used, another way to access it must be found and the original access mechanism must be circumvented.

The National Agricultural Library has an important responsibility to preserve information for the future, including information in digital formats. We have considerable experience in the obligatory copying of information in one digital format to another for preservation purposes, as do other major libraries and archives. We also have had considerable experience with content providers who go out of business and/or fail to provide software upgrades or other technological solutions to permit ongoing usage of their digital works. If institutions such as the National Agricultural Library are penalized for copying digital works so that they may continue to exist in a form that can be used, there will be a significant adverse effect on scholarship and learning because the works may be lost forever.

For these reasons, we cannot agree that there are no current or foreseeable adverse effects of implementing Section 1201(a) of the Digital Millennium Copyright Act. Given these conditions, I hope that the Librarian will consider an exemption so that libraries can continue to engage in activities such as preservation without criminal sanction and significant technological obstacles.

Sincerely,

PAMELA Q.J. ANDRÉ
Director