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Maria Strong
Senior Counsel for Policy and International Affairs
United States Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

April 4, 2014

Re: Study on the Right of Making Available; Comments and Public Roundtable, 79 Fed. Reg. 10,571 (Feb. 25, 2014)

Dear Ms. Strong:

I write on behalf of the Digital Public Library of America (DPLA) in response to the Copyright Office's Notice of Inquiry regarding the study of the creation of a making available right.[1] From its initial planning stages beginning in 2010, DPLA was created to be "an open, distributed network of comprehensive online resources that would draw on the nation's living heritage from libraries, universities, archives, and museums in order to educate, inform, and empower everyone in current and future generations." [2] In DPLA's first year of operations in 2013-2014, we have already facilitated free, open access to nearly six million cultural and scientific works from libraries and archives located across the United States.

Our ability to rapidly expand access to so many works can be credited to our focus on two primary functions: (1) DPLA acts as a portal, linking together diverse library, archive, and museum collections. This includes content from large content hubs such as the Smithsonian Institution or the New York Public Library, and small libraries and archives that have contributed content through our state and regional service hubs; and (2) DPLA acts as a platform that allows developers and others to use our metadata and links to content to create new, transformative works. For example, in this way DPLA has facilitated the creation of new applications such as StackLife, which displays available content through a scrollable virtual representation of the library, and FindDPLA, which connects DPLA text and images to relevant Wikipedia entries.

DPLA has strong reservations about the creation of a broad making available right because we believe such a right would inhibit free and open linking to works that should be legitimately made available online. The potential chilling effect that a making available right would have on the ability of organizations like DPLA and other libraries to deliver content in meaningful ways is great.

Libraries have already digitized large numbers of works, but—as the Copyright Office is aware—have been faced with significant uncertainty about the copyright status of works in their collections.[3] Some of those works are made available on the belief that they are in the public domain; others are made available pursuant to an assertion of fair use based on the facts and circumstances unique to the work and the collection of which it is a part. For a third-party organization such as DPLA that links to such content, it would be nearly impossible to adequately assess the copyright status of all of the works in linked library collections. But a broad making available right could impose liability on DPLA for linking to that content nonetheless. Such a right would stifle efforts to take the cultural treasures held by libraries, which are often constrained to the silos of an individual organization’s servers, and make them more accessible and usable for the world.

Because of these concerns, DPLA believes that a making available right would do more harm than good. Whatever the approach recommended by the Copyright Office, DPLA strongly urges the Office to take steps to preserve free and open linking. The ability to link unhindered is critically important for the continued development of initiatives like DPLA and for the World Wide Web as a whole.

Sincerely,



Daniel Cohen
Executive Director
Digital Public Library of America

[1] U.S. Copyright Office, *Study on the Right of Making Available; Comments and Public Roundtable*, 79 Fed. Reg. 10,571 (Feb. 25, 2014), <http://www.copyright.gov/fedreg/2014/79fr10571.pdf>.

[2] *History*, DPLA, <http://dp.la/info/about/history/> (last visited March 30, 2014).

[3] *See, e.g.*, Berkeley Digital Library Copyright Project, *Submission in Response to the U.S. Copyright Office Notice of Inquiry on Orphan Works and Mass Digitization* 9-11 (Feb. 4, 2013), http://www.copyright.gov/orphan/comments/loi_10222012/Berkeley-Digital-Library-Copyright-Project.pdf (discussing challenges faced by libraries and archives in determining copyright and orphan works status); Society of American Archivists, RE: Notice of Inquiry on “Orphan Works and Mass Digitization,” 1-6 (Jan. 29, 2013), http://www.copyright.gov/orphan/comments/loi_10222012/Society-American-Archivists.pdf (same).