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and

Public Lead Creative Commons USA

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**Mass Digitization is not a useful framework for further action**

I submit this comment on behalf of Creative Commons USA (“CC USA”) the national affiliate of Creative Commons, Inc., housed at American University Washington College of Law. Creative Commons, Inc. and its Affiliate Network share a general interest in delineating uses of copyrighted works that do and do not require a license. Creative Commons licenses explicitly extend a users’ rights to use works only to those uses that would otherwise infringe copyright without in any way diminishing the user’s rights as provided by law.

As used in the NOI and in the Roundtable, the term “mass digitization” appeared to conflate the exercise of the copyright owner’s right of reproduction in shifting a work of authorship from an analog format, such as printed text, to a digital format with the subsequent exercise of other exclusive rights in making the digitized embodiment available to the public in some form. Some participants appeared to contemplate that any proposed legislation would cover both types of activity.

It is the view of CC USA that the exercise of the reproduction right literally in "mass digitization" – scanning a work and saving it in digital format – does not require a license when done to make textual and graphic works more readily searchable or accessible. Additional uses of such digitized works, such as text mining, either would not exercise the reproduction right because only transitory copies are made or would be a fair use if digitized copies were not made available to the public.

Therefore any proposed legislative response to mass digitization should not include within its scope the act of digitization but rather should focus solely on the issue of providing public access to digitized orphan works via reproduction, distribution, performance or display. In this sense, the digital format is of interest only because the Internet enables the possibility of broader public access than would otherwise be available.

CC USA takes no position on the substance of any statutory licensing solution the Copyright Office might propose other than that the scope of any such license should make clear, as Creative Commons licenses do, that it applies only to uses that require a license under current law. In this regard, CC USA notes that fair use enables a range of non-commercial uses of digitized orphan works by libraries and archives that do not require a license.

CC USA requests that if the Copyright Office recommends a legislative solution, any such provision not prejudice the ability of an owner of orphaned rights who emerges subsequent to a diligent search to choose to grant a Creative Commons license for the

rights because, for example, the owner's interest in wide dissemination with attribution supersedes any interest in exclusion for the purposes of commercialization.

Finally, like Creative Commons, Inc., CC USA would also be interested in working with the Copyright Office on modernized registration options that might help reduce the scope of the orphan works problem on a going forward basis.

Signed,

A handwritten signature in black ink, appearing to read "Michael Carroll". The signature is written in a cursive style with a large initial "M" and "C".