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October 9, 2015

Associate Register of Copyrights and
Director of Policy and International Affairs
U.S. Copyright Office
James Madison Memorial Building
101 Independence Avenue, S.E.
Washington, DC 20559-6000

Re: Mass Digitization Pilot Program; Request for Comments
Docket No. 2015—3

Dear Ms. Temple Claggett:

Thank you very much for the opportunity to submit comments and information concerning this very important program.

1. Examples of Projects

It is hard to offer comments, information or suggestions concerning this as at this point as it does not seem it is known who would be doing this and we offer the suggestion that because it is likely that such persons and projects will respond to this Notice of Inquiry with such examples, that perhaps the Copyright Office should add a sort of reply period. It would seem to us that this would be very productive because the Copyright Office will have a number of statements submitted submitting further information with which further comments could be added to.

a) Qualifying Collections

The main qualifications we would have is that no unpublished works be allowed, unless the copyright owner has specifically granted approval that the be added, and that no commercial entities be allowed to be users be granted an ECL for mass digitalization.

Should the pilot be limited to collections involving a minimum number of copyrighted works? If so, what should that threshold number be?

There should be any limits; we are not sure what this would accomplish.

Should the program be limited to works published before a certain date? If so, what date would be advisable?

There should be any limits; we are not sure what this would accomplish.

Should collections that include commercially available works be eligible for ECL, or should the program cover only out-of-commerce works?

Allowing commercially available works to be eligible would depend on the user and as mentioned above, who exactly is going to be able to get a ECL for mass digitalization needs to be established before this can be determined, for example, a library under the setting a true library—this might be acceptable like is now whereby when new books are released, they are usually purchased by libraries for their public.

b) Eligibility and Access

Please describe any appropriate limitations on the end-users who should be eligible to access a digital collection under a qualifying mass digitization project. For instance, “should access be limited to students, affiliates, and employees of the digitizing institution, or should ECL licensees be permitted to provide access to the general public?”

This is going to depend on who the end-users are going to be and what they are going to use them for, as noted above.

Should licensees be permitted to offer access to a collection remotely, or only through onsite computer terminals?

This is going to depend on who the end-users are going to be and what they are going to use them for, as noted above.

c) Security Requirements

What “specific security requirements should be set forth by statute or defined through Copyright Office regulations?”

This is going to depend on who the end-users are going to be and what they are going to use them for, as noted above.

2. Dispute Resolution

Should the legislation authorize informal mediation, with the CRB’s role limited to that of a facilitator of negotiations? Or should the statute provide for binding arbitration?

Yes there should be mediation authorized.

3. Distribution of Royalties

What would be an appropriate timeframe for required distributions under a U.S. ECL program?

Quarterly would be traditional, the maximum should be 6 months.

4. Diligent Search

The Office has recommended that a CMO be required to conduct diligent searches for nonmember rightsholders for whom it has collected royalties. The Office believes that this obligation should include, but not be limited to, maintaining a publicly available list of information on all licensed works for which one or more rightsholders have not been identified or located. What additional actions should be required as part of a CMO's diligent search obligation?

We agree with the Copyright Office's recommendation on this and have nothing further to add to this.

5. Other Issues

The only other issue we would like to comment on is the Copyright Office's recommendation "Give copyright owners the right to limit the grant of licenses with respect to their works or to opt out of the system entirely." The seems like the tack that Google took when they first started mass scanning books and told the world that anyone who does not want their books scanned need to tell us not to—which is the opposite of traditional copyright law. We strongly disagreed with Google and told them that they had no such rights and then for the works we wanted included, we joined their books partnership program and added the works we wanted included, including the copies we wanted to provide (which are of better quality that the scanned copies Google were doing). It might be we are miss-reading this and thus this comment to make sure our concern relating to this is known and perhaps it can be made more clear when the recommendation is implemented.

If there is any further information that I can provide, please let me know. I can be contacted at the above address and or emailed at ryland@authorservicesinc.com.

Very truly yours,

Ryland Hawkins