

February 9, 2024

**Via E-Mail**

Suzanne Wilson  
General Counsel and Associate Register of Copyrights  
U.S. Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6003

**Re: Summary of ex parte meeting regarding Docket No. 2023-3, Access to Electronic Works**

Dear Ms. Wilson,

On February 2, 2024, the Association of American Publishers (AAP), Authors Guild (AG), and Recording Industry Association of America (RIAA) met via Zoom with the Copyright Office to discuss the Office's notice of proposed rulemaking relating to Access to Electronic Works dated September 1, 2023. The participants in the meeting included Terry Hart (AAP), Umair Kazi (AG), and Susan Chertkof and Kunal Makhey (RIAA). Participants from the Copyright Office were Suzanne Wilson, Rob Kasunic, Erik Bertin, and David Welkowitz.

The meeting allowed AAP/AG/RIAA and the Office to discuss the Office's rulemaking proposal and for us to elaborate on issues raised in our joint October 2, 2023, comment regarding the proposed rule. In our written comments, we explained that the proposed rule presents significant legal issues that require a much more comprehensive discussion with affected stakeholders, potentially conflicts with key statutory rights and limitations, exceeds the authority that Congress delegated to the agency with respect to section 408, and raises serious security concerns.

During the February 2 meeting, AAP/AG/RIAA communicated two main messages with regards to the rulemaking, namely:

- The rule contemplates the reproduction of copyrighted works (both through transmission of works from the Copyright Office to the Library of Congress and through the use by the Library of Congress, such as providing public access to the works) without authorization of statute or the copyright owner. This implicates a principle of fundamental importance to our members, and it is an issue that can only be addressed by statute, not through rulemaking.
- Our members are not opposed to digital collections. But they believe the statute must be changed to permit acquisition and use by the Library of electronic deposits (absent authorization by the copyright owner).

Regarding the first point, AAP/AG/RIAA expressed appreciation for the continued efforts the Office is engaging in to modernize the registration system in close consultation with stakeholders, including efforts to improve the existing registration system at the same time as it works on its next generation Enterprise Copyright System. We were surprised to see this proposal introduced with a rushed timeline and no consultation beforehand.

As explained in our written comments, the digital transmission of copyrighted works implicates the exclusive rights of copyright owners, and Section 408, written nearly 50 years ago, does not authorize

reproduction for acquisition and use of electronic deposits by the Library. Without clear statutory authority, the Office is unable to permit such reproduction and distribution through rulemaking.

AAP/AG/RIAA expressed disagreement with the Office's interpretation of 17 USC 704 regarding the reproduction and use without limitation of copyrighted works embodied in electronic deposit copies.

AAP/AG/RIAA noted that our position does not necessarily reflect on current practice and policies of the Copyright Office and Library. Of course, issues related to IT security of electronic deposits, use and access policies, and other practical concerns are critically important to our members. We expressed serious concerns regarding the lack of accountability present in Library policy and practices, which are not codified as regulations. Further, we conveyed discomfort with the fact that the Library could change its policies at any time without notice or stakeholder input and without any clear repercussions. We emphasized the importance of transparency in any rulemaking, and that any rulemaking on the matter must include specific details regarding the safeguards, systems, and policies that the Library will be bound by when handling electronic deposits. However, such issues are independent of the threshold issue of authorization to make copies.

Regarding the second point, AAP/AG/RIAA reiterated that some of its members have already entered into voluntary agreements with the Library to add their works to the Library's digital collections and make them available to the public. We are open to continued discussions addressing digital collections, including addressing issues beyond what can be accomplished via rulemaking.

AAP/AG/RIAA appreciates the Office's consideration of the views discussed during our meeting and remains available to respond to any follow-up questions the Office may have.

Sincerely,

Association of American Publishers

Authors Guild

Recording Industry Association of America