



AUTHORS
ALLIANCE

authorsalliance.org
510.480.8302

2705 Webster St. #5805
Berkeley, CA 94705

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Suzanne Wilson
General Counsel
Library of Congress
U.S. Copyright Office
101 Independence Avenue S.E.
Washington, DC 20559-6000

Via email to Brandy Karl and Laurie Ann Taylor bkarl@copyright.gov and lataylor@copyright.gov.

RE: Summary of ex parte meeting regarding Docket No. 2023-3

Dear Ms. Wilson,

On August 22nd, 2024, the Authors Alliance and the Library Copyright Alliance met via Zoom with representatives from the U.S. Copyright Office to discuss the Office's notice of proposed rulemaking regarding access to electronic works, dated September 1, 2023. Participants in the meeting representing the Authors Alliance included Dave Hansen, Executive Director, and Yuanxiao Xu, Staff Attorney. Representing the Library Copyright Alliance was Jonathan Band, Counsel. The Copyright Office was represented by Laurie Ann Taylor, Attorney Advisor; Robert J. Kasunic, Associate Register; Brandy Karl, Assistant General Counsel; and Suzy Wilson, General Counsel. This letter summarizes the meeting.

The Authors Alliance and the Library Copyright Alliance began by expressing their support for the proposed rulemaking on Access to Electronic Works. Both consider this rule to be reasonable and valuable, as it enables the Library of Congress to expand its collection and provide limited on-site access while allowing the Copyright Office to maintain administrative records. The authors and members represented by both organizations appreciate the opportunity to have their works included in the collection of the Library of Congress via e-deposit. Rightsholders have long advocated for the Copyright Office to facilitate e-deposit, and allowing e-deposits to be used for limited on-site access and administrative record-keeping is a crucial component of integrating e-deposit into the copyright registration process.

The Authors Alliance and the Library Copyright Alliance explained that 17 U.S.C. § 704 fully supports the proposed rule. Section 704 allows the Copyright Office to retain a copy of deposits for its records and to provide the deposits to the Library of Congress. Excluding digital copies from this process would undermine Congress's intent in Section 704 to support the functions of both the Copyright Office and the Library. The term “facsimile” within the context of § 704 should be interpreted to include digital copies, both due to the legislative intent when Congress enacted the section and the standard understanding of the term within the broader library community. It would be unreasonable to allow rightsholders' exclusive rights to limit what the Copyright Office and Library of Congress can do under § 704.

Furthermore, the Authors Alliance and the Library Copyright Alliance emphasized that fair use also independently supports the proposed rule. Fair use is an integral component of copyright law and is widely used in practice among libraries, including the Library of Congress, for purposes such as examination, cataloging, and making works available to the public. Fair use does not require a license from a copyright holder. The Authors Alliance requested that the Copyright Office examine how the fair use rationale applies to the proposed rule.

Finally, the meeting addressed potential security concerns. The Authors Alliance and the Library Copyright Alliance noted that all publishers affected by this rule distribute books electronically, and security concerns regarding the transfer of digital copies are not unique to the Library of Congress. There have been no leaks of copyrighted materials from the Library, and there is no reason to believe this would be an issue. The Library Copyright Alliance pointed out that infringers have easier methods to obtain copyrighted works online than hacking into the Library of Congress's systems. The Authors Alliance suggested that, if security concerns persist, the Copyright Office should consider using industry-standard technological protection measures and software, such as Adobe Digital Editions, when transferring digital copies.

The Authors Alliance and the Library Copyright Alliance concluded the meeting by expressing appreciation for the opportunity to discuss the proposed rulemaking with the Copyright Office. The Authors Alliance and the Library Copyright Alliance remain fully supportive of the proposed rule and expressed eagerness to see its implementation.

Sincerely,



Dave Hansen
Executive Director, Authors Alliance