

Sent via e-mail to section108@loc.gov

March 16, 2007

Mary Rasenberger
Office of Strategic Initiatives
Library of Congress
James Madison Memorial Building, Room LM-637
101 Independence Avenue S.E.
Washington, DC 20540

Re: Section 108 Study Group Request for Comments

Dear Ms. Rasenberger,

By this letter, the museum of The Art Institute of Chicago, The Metropolitan Museum of Art, The Museum of Modern Art, the Solomon R. Guggenheim Foundation, the Los Angeles County Museum of Art, and the American Association of Museums¹ submit the following comments in response to the request for comments by the Section 108 Study Group (the "Request," Docket No. 07-10802). We are all non-profit institutions based in the United States, and operate or represent one or more art museums, archives and/or libraries. We appreciate this opportunity to share our views about the questions posed in the Request.

We are pleased to note the Request's statement that the "Study Group anticipates that it will recommend that section 108 be amended to cover museums as well as libraries and archives." Art museums and other collecting museums – like libraries and archives – serve the important public functions of preserving and making available to scholars and the general public important works of historical, educational, and contemporary interest. Therefore, we strongly urge that section 108 be amended to include museums. Many of our comments herein address the questions posed by the Request from the perspective of art museums, as well as art libraries and archives.

As a general matter, we support the role of section 108 as facilitating the public availability of a broad variety of works. We also believe that it would not be in the best interest of the public to limit the existing scope of section 108 or to introduce new, costly administrative burdens on institutions which rely on section 108. However, because we expect that others' comments will more fully and capably address the majority of the

¹ The American Association of Museums represents the entire scope of museums, including more than 3,000 institutions, in addition to professionals and staff who work for and with museums.

issues raised in the Request and at the public roundtable, we will focus our comments on two issues of particular interest to art museums, libraries and archives.

Topic B: Amendments to Subsection 108(i)

To accommodate art museums, libraries and archives, subsection 108(i) should be amended to expand the application of subsections (d) and (e) to non-text-based works, including pictorial, graphic, sculptural and audiovisual works. Our institutions' collections of rare and unique books and art objects include a substantial number of non-text-based books and other works that garner the same degree of academic and public interest and study as the text-based works found in traditional libraries and archives. Consequently, we receive requests for copies of such non-text-based works from scholars and other members of the public. Out of considerations of practicality and fairness, we believe that our institutions should be permitted to handle such requests consistently with requests for our text-based works. Therefore, in order for our institutions to be secure in providing individual study copies of works, subsection 108(i) should be amended to avoid the exclusion of significant parts of our collections.

Topic C: Limited Public Performance Exceptions

Subsection 109(c) expressly authorizes art museums, libraries and archives to publicly "display" works in their collections, subject to certain reasonable limitations. However, our collections also include a substantial number of works that are technically "performed" as opposed to "displayed" – most notably, audiovisual works. Because many of these lawfully-acquired works of art in our collections are unlicensed, we must rely on the somewhat ambiguous protections of section 107 to make these works available to the public.

In view of this problem, section 108 (or, alternatively, section 109(c)) should be amended to permit limited public performances of unlicensed works by museums, libraries and archives. We believe that it is in the public's best interest to expressly permit museums, libraries, and archives to perform the works in their collection at the place where the copy is located. Such an amendment would provide a welcome sanction of our purpose and practice of making such works of art available to the public alongside the rest of our collections.

Conclusion

In its current form, section 108 provides incomplete protection for the important public functions of art museums, libraries, and archives. We hope that our comments offer a useful prospective, and that our suggestions represent reasonable solutions to the problems that we have identified.

/James Cuno/

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