

**Section 108 Copyright Study Group
Public Roundtable #3
Chicago, Illinois
January 31, 2007 8:30am – 4:00pm**

Roundtable Ground Rules

- Our purpose is to gather information and perspectives from you. Participants will not have the opportunity to ask questions of the Study Group, other than for clarification.
- Only individuals who requested to participate in advance for a particular topic may sit at the table for that topic.
- Due to time constraints, we may have to limit discussion to maintain the Roundtable's schedule. Please limit your responses to a question to 3 minutes. If necessary, we will call time.
- Remember, we are looking for information and findings here to include in our report and assist us with making recommendations. Concrete examples or descriptions of current or planned practices will be particularly helpful. Also explain what key words or phrases mean for you.
- We will ask you to respond to the question that we are asking at that time and to hold responses that relate to other issues. Please listen carefully to the questions.
- Any statements that you do not have an opportunity to make today may be submitted with your written comments.
- You will have an opportunity to submit written comments on any of the issues and questions raised in the Federal Register notice between February 1, 2007, and March 9, 2007.

Agenda

Time	Min	Topic
8:30 – 8:45	15	<p>Welcome</p> <ul style="list-style-type: none"> • Introductions • Overview of Roundtable Process • Ground Rules
8:45 – 10:30	105	<p>TOPIC A: AMENDMENTS TO CURRENT SUBSECTIONS 108(d), (e), AND (g)(2) REGARDING COPIES FOR USERS, INCLUDING INTERLIBRARY LOAN</p> <ul style="list-style-type: none"> • Introduction to Topic A <ul style="list-style-type: none"> • Should section 108 be revised to allow digital reproduction and distribution of copies for users under subsections (d) and (e)? If so, how? (<i>FR Topic A, Question 1</i>) • Topic A, Question Group 1 <ul style="list-style-type: none"> • To what extent do libraries and archives rely on the 108(d) exception when making direct and interlibrary loan copies? If digital reproduction and/or delivery of copies for users is allowed, what impact will it have on those activities? (<i>FR Topic A, Question 3</i>) • To what extent do libraries and archives rely on the 108(e) exception when making direct and interlibrary loan copies? If digital reproduction and/or delivery of copies for users is allowed, what impact will it have on those activities? (<i>FR Topic A, Question 4</i>) • Right now section 108 requires that a copy made for a user under (d) or (e) must “become the property of the user.” The purpose of this language was to prevent libraries and archives from adding user-requested copies to their collections. In the digital world, requiring that the user keep a copy does not preclude the library from retaining one as well. Should 108 be amended to clarify that libraries and archives cannot retain digital copies of works they have reproduced at user requests. (<i>FR Topic A, Question 8</i>) • Topic A, Question Group 2 <ul style="list-style-type: none"> • Should the <i>de facto</i> single-copy limit on copies for users be replaced with language allowing a library or archives to make a “limited number” of copies as reasonably necessary to provide the user with a single copy of the work? Should this language apply to both direct and interlibrary loan digital copies? (<i>FR Topic A, Question 2</i>) • If digital copying and distribution is allowed for copies for users, should new restrictions on these activities be established in order to guard against infringing uses? If so, what restrictions would be appropriate? Examples: User agreements, access controls, copy controls, persistent identifiers. (<i>FR Topic A, Question 5</i>)
10:30 – 10:45	15	Break

Agenda

Time	Min	Topic
10:45 – 12:00	75	<ul style="list-style-type: none"> • Topic A, Question Group 2 (continued) <ul style="list-style-type: none"> • If digital copying and distribution is allowed for copies for users, should “users” be restricted to the library’s or archives’ defined user community? If so, how should this user community be defined? <i>(FR Topic A, Question 6)</i> • If digital copying and distribution is allowed for copies for users, should 108 be amended to clarify that interlibrary loan transactions must be between two libraries/archives? That is, should interlibrary loan itself be defined to exclude direct electronic delivery to a user? <i>(FR Topic A, Question 7)</i> • Topic A, Question Group 3 <ul style="list-style-type: none"> • This question is in two parts. First, should libraries and archives be required to search for a copy of an article or portion of a work at a fair price before they are permitted to make a copy under 108(d)? Second, should 108(e) (and (d), if necessary) be amended to clarify whether a copy of a work available for license but not purchase, qualifies as one that can be “obtained at a reasonable price”? <i>(FR Topic A, Question 9)</i> • Topic A, Question Group 4 (if time permits) <ul style="list-style-type: none"> • Should the Study Group recommend that the interlibrary loan CONTU guidelines – which are not law – be revised for the digital era? Here are some of the possible revisions: <ul style="list-style-type: none"> • To apply to works older than five years • To require borrowing as well as lending libraries/archives to keep interlibrary loan records • To track non-interlibrary loan copies for users • To make records available to rights-holders <i>(FR Topic A, Question 10)</i> • Topic A, Question Group 5 (if time permits) <ul style="list-style-type: none"> • If section 108 is revised to allow digital copies for interlibrary loan purposes, should it also address international electronic interlibrary loan transactions? <i>(FR Topic A, Question 11)</i>
12:00 – 1:00	60	<p>Lunch NOTE: We will restart promptly at 1:00pm.</p>

Agenda

Time	Min	Topic
1:00 – 2:40	100	<p>TOPIC B: AMENDMENTS TO SUBSECTION 108(i)</p> <ul style="list-style-type: none"> • Introduction to Topic B • Topic B, Question Group 1 <ul style="list-style-type: none"> • Should any or all of the subsection (i) exclusions be eliminated? Which ones, and why? What concerns does the prospect of treating all types of works equally under 108(d) and (e) raise? (<i>FR Topic B, Question 1</i>) • Topic B, Question Group 2 <ul style="list-style-type: none"> • What would the effects of eliminating some or all of the 108(i) exclusions be, and how should these effects be dealt with in the statute? • Markets: Will allowing copies – digital or otherwise – for users of music, movies, photos, etc. have a greater impact on the market for these works than it currently does for text-based works? If so, what restrictions should be implemented? Examples: low-resolution, thumbnails-only, streaming-only. Also, how should any restrictions be squared with the scholarly need to retain copies of source materials? • Interaction with 108(d) and (e): Clearly these subsections were written with text-based works in mind. Will they need to be revised for application to non-text-based works? Example: How is a “small portion” of a graphic determined? (<i>FR Topic B, Question 2</i>) • Topic B, Question Group 3 <ul style="list-style-type: none"> • Another approach would be to expand the current allowance of copies for users of pictorial and graphic works that are “adjunct” to text-based works, e.g. illustrations in a printed book. Could we extend this concept to audio-visual and musical materials associated with text? • Librarians and archivists: What is your experience with providing user copies of these types of multimedia works? • Content providers: What, if any, concerns would be raised by broadening the copies for users exceptions in this way? (<i>FR Topic B, Question 4</i>) • Topic B, Question Group 4 <ul style="list-style-type: none"> • Assuming for the sake of argument that the current 108(i) exclusions on copies for users are eliminated in whole or in part, should it be recommended that the CONTU guidelines be revised to apply to interlibrary loan of copies of musical works, graphics, or movies? (<i>FR Topic B, Question 3</i>)
2:40 – 2:55	15	Break

Agenda

Time	Min	Topic
2:55 – 3:55	60	<p>TOPIC C: LIMITATIONS ON ACCESS TO ELECTRONIC COPIES, INCLUDING VIA PERFORMANCE OR DISPLAY</p> <ul style="list-style-type: none"> • Introduction to Topic C • Topic C, Question Group 1 <ul style="list-style-type: none"> • Librarians and archivists: Do your collections contain any, or a sufficient number of, unlicensed digital works to merit legislative attention to the topic? Can you give us examples? (<i>FR Topic C, Question 1</i>) • Topic C, Question Group 2 <ul style="list-style-type: none"> • Do libraries and archives have any policies or practices regarding the provision of access to unlicensed digital works? Does it make a difference if the material is digital rather than analog (e.g., that it requires a machine to read it)? (<i>FR Topic C, Question 4</i>) • Topic C, Question Group 3 <ul style="list-style-type: none"> • What uses should a library or archives be able to make of lawfully acquired, unlicensed digital works? • EU model: Limit access to dedicated terminals on the premises for one user at a time? • Security or other measures to prevent downloading or distributing? • Simultaneous use? • Remote access? What conditions? • Server copies? (<i>FR Topic C, Question 2</i>) • Topic C, Question Group 4 <ul style="list-style-type: none"> • Does an exception need to be added to permit public performance of unlicensed electronic works, akin to 109(c)'s exception for public display? Does 109(c) apply in the digital context? What kinds of works are there for which access is normally achieved via public display and/or performance? (<i>FR Topic C, Question 7</i>)
3:55 – 4:00	5	Closing