



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

## NOTICE OF PUBLIC HEARING

### REPORT TO CONGRESS PURSUANT TO SECTION 104 OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

The following excerpt is taken from Volume 65, Number 206 of the  
*Federal Register* of Tuesday, October 24, 2000 (pp. 63626-63628)

#### LIBRARY OF CONGRESS

#### Copyright Office

#### DEPARTMENT OF COMMERCE

#### National Telecommunications and Information Administration

[Docket No. 000522150-0287-02]

RIN No. 0660-ZA13

#### Report to Congress Pursuant to Section 104 of the Digital Millennium Copyright Act

**AGENCIES:** The United States Copyright Office, Library of Congress; and the National Telecommunications and Information Administration, United States Department of Commerce.

**ACTION:** Notice of public hearing.

**SUMMARY:** The United States Copyright Office and the National Telecommunications and Information Administration announce a public hearing on the effects of the amendments made by title 1 of the Digital Millennium Copyright Act, ("DMCA") and the development of electronic commerce on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of such sections.

**DATES:** The public hearing will be held in Washington, DC on Wednesday, November 29, 2000, from 9:30 a.m. to 5 p.m. Requests to testify must be received by the Copyright Office and the National Telecommunications and Information Administration by 5:00 p.m. E.S.T. on November 24, 2000, and accompanied by a one page summary of the intended testimony.

**ADDRESSES:** The public hearing will be held at the Library of Congress, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20540, Room LM-414. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other

ancillary aids, should contact the Library of Congress or the National Telecommunications and Information Administration at least five (5) working days prior to the hearing by telephone or electronic mail at the respective contact points listed immediately below.

#### FOR FURTHER INFORMATION

**CONTACT:** Jesse M. Feder or Marla Poor, Office of Policy and International Affairs, U.S. Copyright Office, Library of Congress (202) 707-8350; or Jeffrey E.M. Joyner, National Telecommunications and Information Administration (202) 482-1816. E-mail inquiries regarding the hearings may be sent to [jfed@loc.gov](mailto:jfed@loc.gov), [mpoor@loc.gov](mailto:mpoor@loc.gov), or [jjoyner@ntia.doc.gov](mailto:jjoyner@ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:** On June 5, 2000, the Copyright Office and the National Telecommunications and Information Administration published a Notice of Inquiry seeking comments in connection with the effects of the amendments made by title 1 of the DMCA and the development of electronic commerce on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of such sections. 65 FR 35673 (June 5, 2000). That **Federal Register** Notice was intended to solicit comments from interested parties on those issues. For a more complete statement of the background and purpose of the inquiry, please see the Notice of Inquiry which is available on the Copyright Office's website at: <http://www.loc.gov/copyright/fedreg/65fr35673.html>.

In response to the Notice of Inquiry, the Copyright Office and the National Telecommunications and Information Administration received 30 initial written comments and 16 replies (to the initial comments) that conformed to the requirements set forth in the Notice of Inquiry. The comments and replies have been posted on the Office's website; see <http://www.loc.gov/copyright/reports/studies/dmca/>

[comments/](http://www.loc.gov/copyright/reports/studies/dmca/reply/) and <http://www.loc.gov/copyright/reports/studies/dmca/reply/>, respectively.

**Requirements for persons desiring to testify:** A request to testify must be submitted in writing to the Copyright Office and to the National Telecommunications and Information Administration. All requests to testify must include:

- The name of the person desiring to testify;
- The organization or organizations represented by that person, if any;
- Contact information (address, telephone, and e-mail); and
- A one page summary of the intended testimony.

This request may be submitted in electronic form. The Copyright Office and the National Telecommunications and Information Administration will notify all persons wishing to testify of the expected time of their appearance, and the maximum time allowed for their testimony.

All requests to testify must be received by 5 E.S.T. on November 24, 2000.

**Time limits on testimony at public hearings:** There will be time limits on the testimony allowed for speakers. The time limits will depend on the number of persons wishing to testify. Approximately one week prior to the hearings, the Copyright Office and the National Telecommunications and Information Administration will notify all persons submitting requests to testify of the precise time limits that will be imposed on oral testimony. Due to the time constraints, the Copyright Office and the National Telecommunications and Information Administration encourage parties with similar interests to select a single spokesperson to testify.

**File Formats:** Requests to testify may be submitted in electronic form in one of the following formats:

1. If by electronic mail: Send to "104study@loc.gov" and "104study@ntia.doc.gov" a message containing the name of the person

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requesting to testify, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as a request to testify. The one page summary of the intended testimony must be sent as a MIME attachment, and must be in a single file in either: (1) Microsoft Word Version 7.0 or earlier; (2) WordPerfect 7 or earlier; (3) Rich Text File (RTF) format; or (4) ASCII text file format.

2. If by regular mail or hand delivery: Send to Jesse M. Feder, Policy Planning Advisor, Office of Policy and International Affairs, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024; and to Jeffrey E.M. Joyner, Senior Counsel, Office of Chief Counsel, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Please include two copies of the one page summary of the intended testimony, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization. Either the document itself or a cover letter must also identify the document clearly as a request to testify and include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Microsoft Word Version 7.0 or earlier; (2) WordPerfect Version 7 or earlier; (3) Rich Text File (RTF) format; or (4) ASCII text file format.

*Background:* On October 28, 1998, the DMCA was enacted into law (Pub. L. No. 105-304, 112 Stat. 2860). Section 104 of the DMCA directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to submit to the Congress no later than 24 months after the date of enactment a report evaluating the effects of the amendments made by title I of the Act and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of those sections.

The objective of title I of the DMCA was to revise U.S. law to comply with two World Intellectual Property Organization (WIPO) Treaties that were concluded in 1996 and to strengthen protection for copyrighted works in electronic formats. The DMCA establishes prohibitions on the act of circumventing technological measures that effectively control access to a work protected under the

U.S. Copyright Act, and the manufacture, importation, offering to the public, providing or otherwise trafficking in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively controls access to or unauthorized copying of a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. The DMCA also makes it illegal for a person to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively protects a right of a copyright owner in a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. In addition the DMCA prohibits, among other actions, intentional removal or alteration of copyright management information and knowing addition of false copyright management information if these acts are done with intent to induce, enable, facilitate or conceal a copyright infringement. Each prohibition is subject to a number of statutory exceptions.

Section 109 of the Copyright Act, 17 U.S.C. 109, permits the owner of a particular copy or phonorecord lawfully made under title 17 to sell or otherwise dispose of possession of that copy or phonorecord without the authority of the copyright owner, notwithstanding the copyright owner's exclusive right of distribution under 17 U.S.C. 106(3). Commonly referred to as the "first sale doctrine," this provision permits such activities as the sale of used books. The first sale doctrine is subject to limitations that permit a copyright owner to prevent the unauthorized commercial rental of computer programs and sound recordings.

Section 117 of the Copyright Act, 17 U.S.C. 117, permits the owner of a copy of a computer program to make a copy or adaptation of the program for archival purposes or as an essential step in the utilization of the program in conjunction with a machine. In addition, pursuant to an amendment contained in title III of the DMCA, section 117 permits the owner or lessee of a machine to make a temporary copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes of maintenance or repair of that machine.

*Specific Questions:* The principal purpose of the hearing is to inquire into points made in the written comments submitted in this proceeding, and not to raise new issues for the first time. Specifically, the public hearing will (and therefore the one page summary of

intended testimony must) focus on the following questions:

- What are the policy justifications for or against an amendment to Section 109 to include digital transmissions, and what specific facts can you provide to support your position? What problems would an amendment to Section 109 address? What problems would an amendment to Section 109 not address? What problems would an amendment to Section 109 create? What problems would be averted by leaving this section unchanged? What would be the likely impact on authors and other copyright owners of an amendment to Section 109 modeled on Section 4 of H.R. 3048, 105th Cong., 1st Sess. (1997), and what is the basis for your assessment?

- Please explain in detail the impact an amendment to Section 109 to include digital transmissions would have on the following activities of libraries with respect to works in digital form: (1) Interlibrary lending; (2) use of works outside the physical confines of a library; (3) preservation and (4) receipt and use of donated materials. To what extent would an amendment to section 109 fail to have an impact on these activities? Please explain whether and how these activities should and can be accommodated by means other than amendment of Section 109?

- What are the policy justifications for or against an exemption to permit the making of temporary digital copies of works that are incidental to the operation of a device in the course of a lawful use of a work, and what specific facts can you provide to support how such an exemption could further or hinder electronic commerce and Internet growth? What problems would it address and what problems would a broad exemption not address? What problems would such an exemption create? How would your assessment differ if an exemption were limited to

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temporary digital copies of works that are incidental to the operation of a device in the course of an authorized use of the work?

- What are the policy justifications for or against an expansion to the archival copy exception in section 117 to cover works other than computer programs, and what specific facts can you provide to support for your view? Would such an expansion of section 117 further or hinder electronic commerce and Internet growth? What problems would such a statutory change address and not address? What problems would such an expansion create?

- What are the policy justifications for or against expressly limiting the archival copy exception in section 117 to cover only those copies that are susceptible to destruction or damage by mechanical or electrical failure? What problems would such a statutory change address and not address? What problems would such a change create?

**Marybeth Peters,**  
*Register of Copyrights, United States  
Copyright Office.*  
**Kathy D. Smith,**  
*Chief Counsel, National  
Telecommunications and Information  
Administration.*

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