

Statement of James G. Neal

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Hearings on DMCA 1201(a)(1) Rulemaking

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I am James G. Neal, Dean of University Libraries at Johns Hopkins University. I am here today as a spokesperson for the American library community and as a director of a large academic library system. I have also participated extensively over the last decade in the national and international debates on changes in our copyright laws and in the advancement of electronic publishing, electronic education and digital libraries. Most recently, I worked closely with the legislature in Maryland as we considered the UCITA legislation. My basic message today is that we need a meaningful exemption for libraries and their users to the anticircumvention provisions of DMCA 1201. We must avoid the unfair and unnecessary barriers to the legitimate accessing and use of copyrighted works protected by certain technological measures. Therefore, I support with enthusiasm the findings and recommendations submitted to the U.S. Copyright Office on this matter by the American Library Association and other national library organizations. I would like to make several additional points here this morning:

1. We must enable libraries to continue their historic functions, the activities that sustain and advance a healthy society and that break down unfair barriers to information access and use, and these include the ability to archive works, to make materials available for classroom use, to distribute a purchased copy, and to serve the visually impaired, for example.
2. Libraries are responsible users of copyrighted materials, and we strive to educate our users and our communities in the appropriate and legal employment of these materials in their education, research and work. We are prepared to act responsibly in addressing in effective ways abusive behaviors.
3. We currently are working with technological controls such as domain-managed and password systems, but we are very concerned about prospective technological controls that will manage access and use at a level that will prevent legitimate uses of copyrighted information. We need the ability to circumvent such controls when permitted by the provisions of our copyright laws.
4. We are similarly concerned in the library community about the additional risks that such technological controls present in their threats to personal privacy.

5. We are very concerned that technological measures are not designed to prevent alleged piracy, but actually seek to advance a "pay per use" business model for accessing electronic information.
6. We must acknowledge the important relationship between public policy and the ability of libraries and information users to negotiate licenses effectively. When an activity is recognized and supported in law, it is possible to argue more successfully for its inclusion in contract.

With the anticircumvention provisions of the DMCA, the proposed database legislation, and the hegemony of contract law over copyright law threatened by the UCITA legislation now under consideration in our state legislatures, we are facing in libraries a frontal assault by owners of intellectual property who seek to set aside the balance that we have achieved in our copyright laws. We must not reinforce and extend a licensing basis and a transactional model for the electronic information market, and we must not undermine the fundamental and socially beneficial role that libraries have played in enabling access to information.