



June 2, 2022

The Honorable Pat Leahy
Chairman, Senate Judiciary Subcommittee
on Intellectual Property

The Honorable Thom Tillis
Ranking Member, Senate Judiciary Subcommittee
on Intellectual Property

Re: S. 3880

Dear Chairman Leahy and Ranking Member Tillis:

The Library Copyright Alliance (“LCA”) has previously expressed serious concerns about the difficulty libraries would have in participating in the rulemakings authorized by S. 3880 and complying with the technical mandates that could result from those rulemakings. After consultations with your staffs, the LCA and its member associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—have agreed to remove their opposition to S. 3880 if the language reproduced below, which would exclude libraries, archives, and education institutions from the scope of the rulemaking, is included in the bill at markup. LCA and its member associations would not oppose the bill throughout the legislative process so long as this language remained in place and the legislation did not change in a material way that affected libraries.

The definition of service provider in section 514(a)(7) would be amended as follows:

(7) SERVICE PROVIDER.—The term ‘service provider’—

(A) means a provider of online services or network access, or the operator of facilities therefor, that provides storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider; ~~and~~

(B) includes a provider described in subparagraph (A) that offers the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.; and

(C) does not include:

(i) a library or archives—

- (aa) whose collections are open to the public, or are available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field,
- (bb) that has a public service mission;
- (cc) whose trained staff or volunteers provide professional services normally associated with libraries or archives; and
- (dd) whose collections are composed of lawfully acquired and/or licensed materials;
- (ii) a nonprofit educational institution; or
- (iii) any other person solely with regard to providing the services described in subparagraph (A) or (B) to an institution described in subparagraphs (i) or (ii) in the course of providing such services to such institution.

Section 514(e)(2)(J) would be amended as follows:

(J) whether certain categories or types of service providers should be exempt from the subset of service providers covered by a designation, such as—

- ~~(i) libraries;~~
- ~~(ii) educational institutions;~~
- ~~(iii) corporate or not-for-profit websites that permit user comments or posts, but have never or rarely had infringing activity on their services;....~~

We appreciate your willingness to address our concerns.

Respectfully,



Jonathan Band
LCA Counsel