



## **Before the U.S. Copyright Office**

### **Docket No. 2023-3**

## **Comments of the Library Copyright Alliance on the Proposed Rulemaking**

### **Concerning Access to Electronic Works**

The Library Copyright Alliance (“LCA”) consists of two major U.S. library associations: the American Library Association and the Association of Research Libraries. These associations represent over 100,000 libraries in the United States employing more than 300,000 librarians and other personnel. An estimated 200 million Americans use these libraries over two billion times each year. These libraries spend over \$4 billion annually acquiring books and other copyrighted material.

LCA supports adoption of the rule proposed by the Copyright Office. Under the current regulatory framework, 37 CFR § 202.18, the Library of Congress may provide limited on-site access to groups of newspapers electronically submitted for registration, as well as electronic serials and books submitted for mandatory deposit.<sup>1</sup> The proposed rule would expand the categories of electronic deposits covered by the regulation with the same limitations on access as are currently in place.

As part of its Digital Collections Strategy, the Library is shifting towards an “e-preferred” approach across all its acquisition streams, including deposits received from the Office. In conjunction with the Library’s Digital Collections Strategy, the Office is encouraging the submission of works in electronic form. As more of these deposits are made in electronic formats, more of the Library’s collections are digital. Unless the existing on-site access rules are expanded to new categories of deposits, over time the public would have increasingly less access to works in the Library’s collections.

As indicated in the Notice of Proposed Rulemaking, existing security measures would apply to the new categories subject to the proposed rule; accordingly, the access permitted under the proposed rule would not increase the risk that the deposits would be stolen or misused.

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<sup>1</sup> The U.S. Court of Appeals for the D.C. Circuit recently found in *Valancourt v. Garland* that the mandatory deposit of physical copies under 17 U.S.C. § 407 is an unconstitutional taking. Because *Valancourt* expressly declined to consider the constitutionality of mandatory deposit of electronic copies, *Valancourt* does not implicate the proposed rule. In any event, the proposed rule also addresses works deposited electronically for registration under 17 U.S.C. § 408.

- The Library employs the same level of encryption to protect copyright deposits as for other highly sensitive information it holds.
- eDeposit material is protected both at rest and in transit with over 300 IT security controls. Under the Library's continuous monitoring schedule, these controls are subject to repeated testing.
- To date, there have been no security problems with the eSerials and eBooks that have been submitted for mandatory deposit and to which access has been provided under 37 C.F.R. § 202.18.
- Further, there have been no security breaches with respect to the tens of millions of digital files the Library has received from copyright owners over the past decade.
- Access to the new categories of deposits by authorized users would be restricted to Library's physical premises.<sup>2</sup> This access would occur through computer terminals in the Library's reading rooms which are not connected to the Internet, have USB and other ports disabled, and are under the supervision of the Library staff.

Because the proposed rule would benefit the public without harming copyright owners, LCA supports its adoption.

Respectfully submitted,

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<sup>2</sup> Although LCA believes that permitting authorized users to access eDeposits remotely over a secure connection would not increase the likelihood of infringing uses of the works, it is not suggesting that the proposed rule be amended in this rulemaking to permit this. In the future, the Library and the Copyright Office could also explore expanding access to eDeposits by permitting secure access on the premises of designated regional federal facilities.