

New digital copyright rules are bad for libraries

On October 26, the Librarian of Congress James Billington ruled against library users by allowing only two exceptions in the fair use proceeding involving the 1201 anticircumvention provision of the Digital Millennium Copyright Act.

The ruling reveals that Billington adopted recommendations by Register of Copyrights Marybeth Peters to provide exemptions only for malfunctions and to determine which sites are blocked by filtering software. The exemption related to circumventing filtering software may be useful although problematic.

The library community, members of Congress, the U.S. Department of Commerce, the K-12 and higher education communities, and many others have argued in the 1201 proceeding and elsewhere that the longstanding principle of fair use must continue in the digital era. Because of this decision, users of digital information will have fewer rights and opportunities than users of print information. In fact, the pay-for-use scenario that librarians have feared appears to have now become a reality with this rule.

The affect on library users

The ruling is not some narrow legalism. It has real consequences for the American people because it is a direct threat to public access to information. The rule appears to give in to the demands of the proprietary community: it essentially locks up information and requires library users to pay for each use.

"The Copyright Office has issued a misguided ruling taking away from students, researchers, teachers, and librarians the long-standing basic right of 'fair use' to our nation's digital resources," said Nancy Kranich, ALA president. "All library users will be impacted."

The ruling itself

Peters concluded: Pursuant to the mandate of 17 U.S.C. 1201 (b) and having considered the

evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian of Congress publish two classes of copyrighted works where the register has found that non-infringing uses by users of such copyrighted works are, or are likely to be, adversely affected, and the prohibition found in 17 U.S.C., 1201 (a) should not apply to such users with respect to such class of work for the ensuing three-year period. The classes of work so identified are:

1. compilations consisting of lists of Web sites blocked by filtering software applications; and
2. literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage, or obsolescence.

Any exemption of classes of copyrighted works published by the librarian will be effective only until October 28, 2003. Before the period expires, the register will initiate a new rulemaking to consider de novo what classes of copyright works, if any, should be exempt from 1201 (a)(1)(A) commencing October 28, 2003.

What is the library community doing?

Before the decision, ALA, in conjunction with the American Association of Law Libraries, the Association of Research Libraries, the Medical Library Association, and the Special Libraries, submitted filings and testimony in the proceeding arguing that there should be exemptions from the Copyright Act's new restrictions against accessing copyright works that are protected by technological measures. These groups are now considering either requesting a reconsideration of the ruling, asking for new legislation, or beginning litigation.

For updates, subscribe to ALAWON, the ALA Washington Office Electronic Newslines (www.ala.org/washoff/alawon). Additional information is at the Library of Congress Web site: <http://www.loc.gov/copyright/1201/anticirc.html>.

At this writing, results of the Presidential and Congressional elections are unclear. Future columns will address likely issues in the 107th Congress and the new administration. ■

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