

TOPIC 2:

DMCA, COPYRIGHT TERM EXTENSION, AND SECTION 108

Topic question

What changes did the Digital Millennium Copyright Act (DMCA) make to Section 108 and how do these changes affect libraries?

Overview

Section 108 grants qualifying libraries and archives (see Section 108(a)) additional use rights beyond a general right of fair use under Section 107. Changes were made to Section 108 as part of the DMCA to update the law for the digital age. With these changes, the DMCA allows the qualifying library or archive (under Section 108(b) and 108(c), the so-called preservation and replacement provisions), to make digital copies of library or archive materials in limited circumstances. A digital copy made under either provision must remain for on-site use only. It cannot be made available “outside the premises of the library or archives in lawful possession of such copy.”⁴⁸

The second major change as a result of the DMCA was to include under the Section 108(c) list of replacement purposes (damaged, deteriorating, lost, stolen) those items in the library or archive collection (again Section 108(c) applies only to published works) no longer usable because the item exists in an obsolete format.

Third, Section 108(a)(3) was amended to reflect that many works protected by copyright may not have a formal copyright notice. This change offers an alternative to placing formal copyright notice on an item that may not require it (a misleading use of the copyright symbol) or simply leaving it off entirely and perpetuating the belief that a work is not protected.

Finally, Section 108(h) represents a small compromise by copyright owners to libraries and archives. This provision derives from recent copyright term extension legislation, the Sonny Bono Term Extension Act,⁴⁹ not the DMCA. Under the Sonny Bono Term Extension Act, the term of copyright was extended by 20 years.

An exception was made for the use of these extended-term works by qualifying (under Section 108) libraries and archives. Section 108(h) details the circumstances under which a use can be made of the work. In essence, Section 108(h) allows the library or archive to ignore the new term extension, that is, the last 20 years of protection. To qualify, a work must neither be subject to normal commercial exploitation nor available at a reasonable price. The purpose of the reproduction, however, must be for preservation, scholarship, or research.

What you need to know

Familiarity with the following is helpful to fully comprehend the discussion of this topic:

- Understand the basic operation of Section 108.⁵⁰
- Understand copyright notice requirements⁵¹ and copyright duration.⁵²

Why watch this topic?

When the DMCA and Bono Term Extension Act amended Section 108, libraries were given significant use rights in the digital environment. Some library and archive advocates, however, say the amendment does not go far enough. For example, limiting the use of digitized collections under revised Section 108(b) or (c) to on-premise only draws a distinction between traditional libraries and archives (those with some analog and some digital collections) and those libraries and archives that are completely virtual.

Exclusive virtual libraries are not favored under the DMCA, as the new Section 108 digitization rights do not extend to their collections. This section does not appear to promote the technological neutrality that copyright law boasts; it seems to continue to envision a traditional physical place and condition under which copyrighted works are accessed. Some advocates believe Section 108 should have been amended to reflect the development of digital-only collections.

The term “extension legislation” is controversial in itself. The copyright protection term for new works is now the life of the author plus 70 years. Combining the life plus the 70, the duration can easily exceed a century. Is this time frame simply too long? Litigation has been commenced by a group of concerned law professors challenging the definition but has been so far unsuccessful.⁵³

Ultimately, the exception granted Section 108 libraries and archives in Section 108(h) may do little for them. Works a library or archive might find valuable or popular enough to digitize (reproduce) or otherwise use might also have commercial viability. If so, one of the conditions for use under Section 108(h) is not met. The exception to the term extension may prove hollow.

Background: Changes in Section 108 since the 1976 Copyright Act

Section 107 is a general fair-use provision. Many other provisions, however, address in some way the use of copyrighted works and limit the exclusive rights of copyright owners. These additional use provisions might be termed “specific use” and concern particular types of works, particular types of organizations, and particular uses. Section 107 (fair use) is always available—if a library meets the requirements of additional use sections, such as Section 108. The use might still be acceptable, under the general fair-use concept contained in Section 107. Use of Section 108, for example, does not preclude use of Section 107 in any way.

Having more specific provision is helpful, as observed by the 2nd Circuit in *American Geophysical Union vs. Texaco, Inc.*: “Congress has thus far provided scant guidance for resolving fair-use issues involving photocopying, legislating

An excellent chart on the effects of the Bono term extension legislation is found at www.unc.edu/~uncing/public-d.htm.

specifically only as to library copying.”⁵⁴ The lack of case law applying Section 108 continues to contribute to the controversial nature of reproduction in qualifying libraries and archives under that provision.

Section 108 is long and complex. Understanding each subsection is necessary at some point. The focus here, however, is on recent changes as a result of the DMCA⁵⁵ and the Bono Term Extension Act.⁵⁶ The major change in Section 108 before this period was the deletion in 1992⁵⁷ of a Section 108(i). It required every five years that “the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems and present legislative or other recommendations, if warranted.”⁵⁸ In repealing the library reproduction reporting measure the 1992 House Judiciary Committee believed a level of adequate stability had been achieved between the library and publishing communities, obviating any need for further study.⁵⁹ Given the perplexing nature of reproduction and distribution in libraries, especially in the digital age, repeal of the library reproduction reporting subsection was likely premature.

Background: Qualifying libraries and archives

Section 108(a) establishes the circumstances that must exist before a library or archive can engage in reproduction and distribution (except for Section 108(c), reproduction only) of copyrighted materials. These circumstances include archival preservation and security of unpublished works, replacement of published works, reproduction for a patron of a serial or less than whole part of a work and reproduction for a patron of an entire or substantial portion of a work.⁶⁰ Section 108(a) states in total: “Except as otherwise provided in this title and notwithstanding the provisions of Section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in Subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage; (2) the collections of the library or archives are (i) open to the public, or (ii) 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; and (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.”

A major limitation of the application of Section 108 is contained in Subsection 108(a)(1), “reproduction or distribution is made without any purpose of direct or indirect commercial advantage.” Few courts have addressed this issue; the limitations under Section 108 standard appear more rigid. The district court in *American Geophysical Union vs. Texaco, Inc.* concluded that because the defendant used the copies as part of its overall commercial enterprise, the defendant could not qualify for Section 108(1)(1) status: “Section 108 authorizes library photocopying under narrowly specified

circumstances. The circumstances do not apply. Section 108 is made applicable only “if the reproduction...is made without any purpose of direct or indirect commercial advantage.” As noted above, Texaco makes the photocopies for commercial advantage. Texaco’s \$80 million annual budget for scientific research, of which its photocopying represents a microscopic part, is not expended as an exercise in philanthropy. The spending is done for profit. Articles are photocopied to help Texaco’s scientists in their profit-motivated research.”⁶¹ The *Texaco* case appears to contradict legislative history.

The House Report from the original enactment of Section 108 in 1976 focused on the “immediate commercial motivation behind the reproduction or distribution itself, rather than to the ultimate profit-making motivation behind the enterprise in which the library is located.”⁶² In contrast, the Senate Report from the original enactment suggests Congress saw limited application of Section 108 to libraries or archives in for-profit organizations. According to the Senate Report, Section 108(a)(1) is intended to “preclude a library in a profit-making organization from providing photocopies of copyrighted materials to employees engaged in furtherance of the organization’s commercial enterprise, unless such copying qualifies as a fair use, or the organization has obtained the necessary copyright licenses.”⁶³ The Conference Report to the 1976 Act strikes a balance in stating that isolated, spontaneous copying or “participation by such a library or archive [in a for-profit organization without any commercial motivation] in interlibrary arrangements, would come within the scope of Section 108.”⁶⁴

Section 108(a)(2) requires that the library or archive either be open to the public or be available to researchers in the field, not just its own employees. In other words, a school library that allows parents to access the collection is open to the public, but a school library is not open to the public simply because its students and teachers and staff come from the community or because the institution is funded with public monies. Likewise, a private archive associated with a corporation, for example, one that allows researchers studying the history of American enterprise related to the corporation’s industry, qualifies under Section 108(a)(2)(ii).

Finally, Section 108(a)(3) requires that the work reproduced or distributed under one of the operative subsections bear a copyright notice if indeed the work is clearly protected by copyright, and a copyright notice exists of the work. In cases where the library or archives makes a copy or distributes a work under Section 108(b) through (e) that does not have a copyright notice, the DMCA now requires that the library or archive place a statement to the effect that the work may be protected by copyright and the user should act accordingly.

Main discussion

In Section 108 of the U.S. Copyright Code, Subsections (b) and (c) should be read in tandem because both sections address reproduction (Subsection (b) addresses distribution as well) by a library or archive for its own use (in Section 108(b) the use of another library or archive). But significant differences exist in the sort of works covered by the subsections and the requirements imposed on institutions before a subsection applies.

A format is obsolete if the viewing or playing technology is only available in secondhand markets.

Section 108(b) and unpublished works

Section 108(b) states that “[t]he rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by Clause (2) of subsection (a), if—(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and (2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.”⁶⁵

Section 108(c) and preservation

Section 108(c) states that “[t]he right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and (2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.”⁶⁶

Subsection (c) offers guidance for telling when a technology is obsolete: “for purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.” According to the DMCA Senate Report, availability only in secondhand stores “should not be considered reasonably available.”⁶⁷

Under Section 108 up to three copies of a qualifying work could be made; for example, a backup copy, a digital copy loaded on the library’s intranet, and a third copy for use by a companion library or archive. Subsection (b) applies to unpublished works. Subsection (c) applies to published works. Under Section 108(b), reproduction or distribution of an unpublished work must be for the purpose of preservation and security of the owning library, or for archive, or for deposit for research use in another library or archives. This subsection might apply when the library or archives desires a backup copy (reproduction) of unpublished material or is willing to share a part of its collection (of unpublished work) with another library or archive. In this latter case, the library makes a copy of the item from its own collection for the other library.

The copy made “for deposit or research use in another library or archive” does not necessarily exist for preservation or security. This loophole suggests duplicate copies of unpublished collections might spring up in libraries and archives across the country. In reality, some libraries or archives may not want to make a copy for another library or archive for reasons of collection integrity. The requesting library may not be happy about refusal by the holding library, but nothing in Section 108 requires a library or archive to share its collection with another library or archive. Moreover, Section 108(b)(1) indicates the work must be a part of the holding library’s collection. The library cannot obtain a reproduction of the work from some other source to use Section 108(b) to make a copy for its collection. Section 108(b) structures the reproduction and distribution right so the holding library makes the copy.

Digital copies must be made for in-house use only

Section 108(b)(2) allows for reproduction of copyrighted works in a digital format. If a digital copy is made (such as when a collection of unpublished archival records, such as letters or photographs, are digitized), the digital collection must not be otherwise distributed or available to the public outside the premises of the library or archive. Loading the digital collection on an intranet is permissible, but placing the digital collection on the library's or archive's general Web site, accessible to remote users, is not. Further, the receiving library or archive may not distribute the digital copy to another library or archive. Distribution is limited to the initial transfer ("is not otherwise distributed in that format")⁶⁸ with the receiving library required to then print out the material for use in its collection.

Congress' intent for virtual and digital collections

Section 108(c) contains a similar in-house only digital format use limitation. To explain the Committee's concern with making library collections, once digitized, widely accessible in Web environments, the DMCA Senate Report cautioned: "this proviso is necessary to ensure that the amendment strikes the appropriate balance, permitting the use of digital technology by libraries and archives while guarding against the potential harm to the copyright owners' market from patrons obtaining unlimited access to digital copies from any location."⁶⁹ The DMCA Senate Report tread carefully into the digital age, unwilling to endorse the concept of the digital library and drawing a distinction between traditional and virtual libraries, in spite of developments within the library and archive world to move precisely in the direction of the transparency of information and library services:

"Although online interactive digital networks have since given birth to online digital 'libraries' and 'archives' that exist only in the virtual (rather than physical) sense on Web sites, bulletin boards and home pages across the Internet, it is not the Committee's intent that section 108 as revised apply to such collections of information...The extension of the application of Section 108 to all such sites is tantamount to creating an exception to the exclusive rights of copyright holders that would permit any person who has an online Web site, bulletin boards, or a home page to freely reproduce and distribute copyrighted works. Such an exemption would swallow the general rule and severely impair the copyright owner's right and ability to commercially exploit their copyrighted works."⁷⁰ Apparently, Congress did not trust the human nature of Web users, and the "if I can copy it I will copy it" mentality that pervades much of Internet use. It wanted to place libraries in the uncompromising position of having played some role in the perpetuation of this potentially infringing mentality by making large amounts of material available to remote Web users.

Replacement policies under Section 108

Section 108(c) applies to published works reproduced by a library or archive to replace an item that is damaged, deteriorating, lost, or stolen, or is in an obsolete format. As observed earlier, the language regarding obsolete works was added by the DMCA. Before the library or archive can make the replacement copy or migrate from an obsolete format to a usable one, though, it must first comply with language from the 1976 enactment of

Section 108(c) that remains in place: the library or archive must determine that a new, unused replacement “cannot be obtained at a fair price.” If a used copy is available in the secondhand book market or if the unused copies are available only at a premium, a copy could be made. The library, however, may not use Section 108(c) to make a backup copy of a published work in anticipation of its needing replacement at some future date or the eventual obsolescence of its associated viewing or rendering technology.

If a library owns a book that is lost or stolen or damaged or otherwise falling apart, but the book is still available for purchase through normal collection development channels or vendors, that is, an unused replacement at a fair price is still available, the library or archive cannot make a replacement copy, but must purchase a new copy. This definition of the law under the 1976 Act remains unchanged. According to 1976 legislative history, a reasonable effort “always require[s] recourse to commonly known trade sources in the United States, and in the normal situation also to the publisher or other copyright owners (if such owner can be located at the address listed in the copyright registration), or an authorized reproduction service.”⁷¹

Works available in new formats

Suppose the library has a cassette tape. Cassette machines are still widely available so the technology is not obsolete. Suppose also that the tape is damaged, deteriorating, lost, or stolen. Although an unused cassette version of the recording is no longer available, a new compact disc version is available at a fair price. (The same might be true of VHS or laserdisc works versus the DVD marketplace.) Can the library make a copy of the cassette onto another cassette or could it make a digital copy, thus creating its own compact disc of the recording? The answer depends if you interpret *unused replacement* as making reference to an unused replacement in the original format (in this case a cassette version) or view the provision as a reference to an unused replacement for the work in general, that is, copies can only be made when the work is no longer commercially available and out of print, regardless of the original format.

Legislative history offers little help in this situation. In 1976, Congress had books in mind when it gave the example of “commonly known trade sources.” Although the latter interpretation means a more costly collection development path for the library or archive—it would have to purchase the new compact disc version of the recording—some scholars agree with the interpretation and it is the safest recourse.

To believe that Section 108(c) only requires a check to see if a brand new version of the work is still available at a reasonable price means the library has perpetual access to a work once it is purchased and wears out (or is lost or stolen), except in rare circumstances when the work remains available at a fair price in its original format. So much for technological neutrality! In the words of the DMCA House Report: The copyright law historically has been “technology neutral.” Its various provisions “do not regulate commerce in...products and devices for transmitting, storing and using information. Instead, the provisions prohibit certain actions and create exceptions to permit certain conduct deemed to be in the greater public interest, all in a way that balances the interests of copyright owners and users of copyrighted works.”⁷²

The interpretation most favorable to libraries, that a library or archive can make a copy only as long as the originally purchased format is no longer

available, unused, and at a fair price, seems inconsistent with the idea behind Section 108(c). This interpretation presupposes an odd concept of wear and tear in libraries and archives. The logical purpose of the right given to qualifying libraries and archives under Section 108 appears as an outlet for those libraries and archives in situations where works are still protected by copyright (so copies cannot be indiscriminately made) but yet are no longer commercially available at a reasonable price.

Although the DMCA Senate Report contains little guidance, it does suggest the following intent: "This provision is intended to permit libraries and archives to ensure that copies of works in their collections continue to be accessible and useful to their patrons."⁷³ Yet the same "unused replacement cannot be obtained at a fair price" restriction applies. The point was that Congress did not want the out-of-print or special-market status in 1976 or the "unplayable" (in terms of obsolete technology) nature of a work in 1998 to mean that an item would no longer be available when the library needed to replace it.

More uncertainty regarding unused replacements

What is not clear is how the "unused replacement at a fair price" language should be interpreted when applied to works in an obsolete format. This confusion is a result of Congress adding another category of triggering purpose or occurrence, that is, *obsolete* was added by the DMCA to the existing listing of Section 108(c) purposes, "damage, deteriorating, lost, or stolen." "Unfortunately, the existing set ("damage, deteriorating, lost, or stolen") refers to an item's condition and the language added by the DMCA ("obsolete") is based on the status of the viewing or rendering technology.

To complicate matters, Congress structured the addition of the "obsolete" condition of the new DMCA technology proviso to link with the "unused replacement and fair price language" proviso previously applicable to occurrences dealing only with the condition of the work.

Does this addition mean, for example, that if titles in a collection of videotapes is in Beta format (the Beta machine being an obsolete technology) but is now also available in VHS format, unused and at a fair price, that the library or archive could not avail itself of Section 108(c) because an unused replacement is still available at a regular retail (fair) price, albeit in a different format (in VHS) than the original purchased tapes (in Beta)? This inability to make the transfer is a rather harsh result for the library or archive and limits greatly the exception created by the DMCA. Again the legislative history of the DMCA provides no guidance on the coordination of the obsolete format proviso and the unused replacement language.

Again, a strong argument can be made for a result that a library or archive finds unwelcome, and the library must purchase a VHS or DVD version of those Beta titles that it owns and desires to transfer into a more useful format. However, the "unused replacement at a fair price" language, however, remains and applies to both sections. Moreover, it does not refer to the original format of the work, but a replacement of the work in any format. Interpreting the provision otherwise means that once a technology becomes obsolete, such as the Beta or perhaps soon the analog cassette, near perpetual access by the library or archive is granted by Section 108(c) because the only check that needs to be made is that an unused original Beta cassette of the work is no longer available. The imposition of this statutory condition would seem ridiculous.

What is clear under Section 108(c) is that a library or archive could reproduce or even migrate (make a digital copy of) a music cassette tape if, for example, the only unused replacement of the item in DAT or CD is available but at an unfair price, or in the case of the Beta video tape could no longer locate a VHS, DVD, or other version of the tape for sale.

What's a library or archive to do? Make the copy since this scenario meets the requirements of Section 108(c) and is precisely the situation in which Section 108 was meant to apply.

Libraries can disregard copyright term extension in some cases

Section 108(h) was added by recent copyright term extension legislation.⁷⁴ The legislation extended the duration of current copyright protection for works protected as of Dec. 31, 1998, by an additional 20 years. The library and archive community, however, was given a special exemption and need not recognize the additional 20-year extension if the purpose of the reproduction, distribution, display or performance of a published work is for purposes of preservation, scholarship or research. This exemption applies in the last 20 years of any term of copyright of a published work, if the library or archive (after a reasonable investigation) determines that none of the following conditions apply:

- The work is subject to normal commercial exploitation
- A copy or phonorecord of the work can be obtained at a reasonable price
- The copyright owner or its agent "provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth" above apply, that is, the work is still subject to normal commercial exploitation or is available at a reasonable price.⁷⁵

The legislative history does not define what reasonable investigation or normal commercial exploitation is but only indicates that "the exemption would allow library users the benefit of access to published works that are not commercially exploited or otherwise reasonably available during the extended term."⁷⁶ This exception might be somewhat hollow. Because the most desirable works for which a library or archive might want to disregard the copyright term extension might be the same works a copyright owner is interested in making commercially available. For example, if a work is still popular and performed ("subject to normal commercial exploitation") or is still for sale ("work can be obtained at a reasonable price") then one of the foreclosing conditions of Section 108(h)(2)(A) or 108(h)(2)(B) is met and the library or archive must honor the copyright term extension granted by the new law to the work.

Procedures for exercising a Section 108(h)(2)(C) notice

In 1998, the U.S. Copyright Office released interim implementation regulations for the library or archive exemption to copyright term.⁷⁷ The 20-year period applies to subsequent users of the work ("The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives."⁷⁸). This exemption is only for the qualifying library or archive or nonprofit educational institution—patrons of those libraries and archives must still honor the term extension. Final regulations have now been

issued that standardize the notice copyright owners can provide to libraries and archives.⁷⁹

Unresolved points or issues

- Interpretation of the unused replacement provision (strict versus liberal).
- Little, if any, case law involves Section 108; litigation involving Section 108, should it arise, would be significant.
- Congress proceeded with caution when it expanded the digital rights of libraries and archives, and further amendment to Section 108 to expand those rights to virtual library collections is unlikely in the near future.
- Though technically not a result of the DMCA, the exemption provided in Section 108(h), addressing library and archive use of copyrighted materials in the last 20 years of the copyright, should be monitored to determine whether the section ever significantly benefits qualifying libraries.

Resources

Helpful URLs

www.loc.gov/copyright/legislation/dmca.pdf The Digital Millennium Copyright Act—U.S. Copyright Office Summary

www.ala.org/washoff/dmguid.html Digital Millennium Copyright Act Guide—ALA Washington Office

From the library literature

Michael S. Shapiro and Brett I. Miller. *A Museum Guide to Copyright and Trademark* (1999) (American Association of Museums) contains an excellent discussion of copyright duration under the new law.

J. Crosby. (1999) Digital copyright protection: Good or bad for libraries? *Information Outlook*, 3(1), 32. Includes overview as well as discussion of (1) the circumvention of protection systems (passwords, encryption codes, and so on) with intent to infringe copyright; and (2) online service provider liability.

B. Lawlor. (2001) The copyright revolution. *Managing Information*, 8(4), 58-61. Covers a variety of topics related to the DMCA: the current database protection environment; library perspectives on technological protection; library perspectives of copyrightable works; general understanding of copyright law and fair use; key issues in the rulemaking report; exemptions granted; and other exemptions considered.

M.T. Schaefer. (1998) The landmark copyright act: Making life interesting for librarians. *Information Retrieval & Library Automation*, 34(6), 1-4. Includes summaries of key primary source materials and articles in law review and technical publications

From the legal literature

Bart A. Lazar. "New Statute Tackles Challenging Internet and Creativity Issues: Digital Millennium Copyright Act Arrives," *New York Law Journal*, March 15, 1999, at S3.

Edward Samuels. "Rights on the Net: The Digital Millennium Copyright Act," *Cable TV and New Media Law & Finance*, March 1999, at 1.

Mark F. Radcliffe. "Congress Helps Resolve 'Net Copyright Issues," *The National Law Journal*, Feb. 8, 1999, at C16.

Marc S. Friedman and Lindsey H. Taylor. "The Digital Millennium Copyright Act: New Protections for the Computer Age," *New Jersey Law Journal* (157 N.J.L.J. 326) July 26, 1999.

Note: Christina N. Gifford. "The Sonny Bono Copyright Term Extension Act," 30 *University of Memphis Law Review* 363 (2000).

Wendy J. Gordon Ginsburg, Arthur R. Miller, William F. Patry. "Symposia: The Constitutionality Of Copyright Term Extension: How Long Is Too Long?," 18 *Cardozo Arts & Entertainment Law Journal* 651 (2000).

ENDNOTES

⁴⁸ 17 U.S.C. § 108(b) and (c).

⁴⁹ Pub. L. No. 105-298; 112 Stat. 2827, Title I (1998).

⁵⁰ Dwayne K. Butler and Kenneth D. Crews, "Copyright Protection and Technological Reform of Library Services: Digital Change, Practical Application and Congressional Action," in *Libraries, Museums, and Archives: Legal Issues and ethical Challenges in the New Information Era* 257 (Tomas A. Lipinski, ed. 2001).

⁵¹ 37 C.F.R. § 201.14 and 37 C.F.R. § 201.24.

⁵² Michael S. Shapiro and Brett I. Miller, *A museum Guide to Copyright and Trademark*, 32-41 (1999).

⁵³ *Eldred vs. Reno*, 239 F.3d 372 (D.C. Cir. 2001), reh'g denied, reh'g en banc denied, 255 F.3d 849.

⁵⁴ *American Geophysical Union vs. Texaco, Inc.*, 60 F.3d 913, 917 (2nd Cir. 1993).

⁵⁵ Pub. L. No. 105-304, 112 Stat. 2889, Title IV (1998).

⁵⁶ Pub. L. No. 105-298; 112 Stat. 2827, Title I (1998).

⁵⁷ Copyright Amendments Act of 1992, Pub. L. No. 102-307, 106 Stat. 264, Title III (1992).

⁵⁸ 17 U.S.C. §108(i) (1988).

⁵⁹ H. Rpt. 102-196, 102nd Cong., 1st Sess. 188 (1992).

⁶⁰ 17 U.S.C. § 108(b)-(e).

⁶¹ *American Geophysical Union vs. Texaco, Inc.*, 802 F. Supp. 1, 27 (S.D.N.Y. 1992), aff'd, 60 F.3d 913, 917 (2nd Cir. 1993).

⁶² H. Rep. 94-1476, 94th Cong. 2nd Sess. (1976), reprinted in U.S. Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians 18 (1993).

⁶³ S. Rep. 94-473, 94th Cong. 2nd Sess. (1976), reprinted in U.S. Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians 23 (1993).

⁶⁴ H. Rpt. 94-1733, 94th Cong. 2nd Sess. (1976) (Conference Report), reprinted in U.S. Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians 8 (1993).

⁶⁵ 17 U.S.C. § 108(b) (2000).

⁶⁶ 17 U.S.C. § 108(c) (2000).

⁶⁷ S. Rep. 105-190, 105th Cong. 2nd Sess. 62 (1998).

⁶⁸ See, Dwayne K. Butler and Kenneth D. Crews, "Copyright Protection and Technological Reform of Library Services: Digital Change, Practical Application and Congressional Action," in *Libraries, Museums, and Archives: Legal Issues and Ethical Challenges in the New Information Era* 257 (Tomas A. Lipinski, ed. 2001).

⁶⁹ S. Rep. 105-190, 105th Cong. 2nd Sess. 61-62 (1998).

⁷⁰ S. Rep. 105-190, 105th Cong. 2nd Sess. 62 (1998).

⁷¹ H. Rpt. 94-1476, 94th Cong. 2nd Sess. (1976), reprinted in U.S. Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians 19 (1993).

⁷² H. R. Rep. No. 551 (Part 2), 105th Congress, 2d Session 24 (1998).

⁷³ S. Rep. 105-190, 105th Cong. 2nd Sess. 62 (1998).

⁷⁴ Pub. L. No. 105-298; 112 Stat. 2827, Title I (1998).

⁷⁵ 17 U.S.C. § 108(h)(2)(A)-(B) (2000).

⁷⁶ H. Rep. 105-452, 105th Cong. 2nd Sess. (no pagination) (1998) (available in LEXIS*NEXIS).

⁷⁷ Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, 63 *Federal Register* 71785 (Dec. 30, 1998).

⁷⁸ 17 U.S.C. § 108(h)(3) (2000).

⁷⁹ 37 C.F.R. § 201.39.