

DOCKET NO.
RM 2009-3
COMMENT NO. <u>4</u>

ALA American Library Association



ASSOCIATION OF
RESEARCH LIBRARIES

AUG 31 2009

**BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS**

**IN THE MATTER OF
MANDATORY DEPOSIT OF PUBLISHED
ELECTRONIC WORKS AVAILABLE ONLY ONLINE**

Docket No. RM 2009-3

**COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION AND
THE ASSOCIATION OF RESEARCH LIBRARIES**

Pursuant to the Notice of Proposed Rulemaking published by the Copyright Office in the *Federal Register* on July 15, 2009, the American Library Association and the Association of Research Libraries submit the following comments regarding "Mandatory Deposit of Published Electronic Works Available Only Online."

The American Library Association (ALA) is a nonprofit professional organization of more than 65,000 librarians, library trustees and other friends of libraries dedicated to providing and improving library services and promoting the public interest in a free and open information society.

The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the diverse community they serve.

Mandatory Deposit of Published Electronic Works Available Only Online

The ALA and ARL thank the Library of Congress (LOC) for proposing to amend its regulations governing mandatory deposit of electronic works published in the United States and available only online under 37 CFR § 202.19(c)(5). ALA and ARL recognize that significant technological advances have been made and as such, believe this initiative to preserve and provide access to journal literature is extremely important, especially in light of the increasing number of journals being published only online. ARL and ALA commend the Library of Congress for proposing this initiative to ensure that it continues to build our national library.

Single Copy of a Work Demanded

The ALA and ARL support the Library of Congress's interest in acquiring and preserving both electronic works (including those born digital) and print/analog counterparts. In addition, ARL and ALA concur with the Library of Congress as detailed in the July 2009 "Acquisition of Electronic Works Through Mandatory Deposit: Goal and Implementation" that the "Library of Congress has a unique responsibility for building a national collection of works." Thus we note that this proposed policy is "unique" to the Library of Congress, especially given the conservative nature of the proposed exemption that allows for simultaneous access of the electronic works by only two on-site users. Limiting simultaneous access to two users is not in accord with current access practices. Such a conservative policy should not be considered neither standard practice nor appropriate beyond the unique situation of the Library of Congress. Given the nature of the Library of Congress, its status as the national library, and its responsibility for

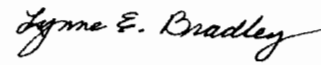
building and preserving a national collection of works, the ALA and ARL understand the nature of this approach; however, we caution that this should not be considered precedent setting.

Potential Future Statutory Changes

The ALA and ARL support the Library of Congress's goals to capture Internet works, as libraries have for television and radio transmissions, in accordance with the Copyright Act of 1976. It is important to note that while doing so would fall within the mission of the LOC, other libraries are actively engaging in such activities and any statutory change should not preclude others from doing so also. Moreover, any statutory changes regarding the issue of preservation and access to electronic works via copyright deposit should be limited to the LOC's authority to accept and preserve these works.

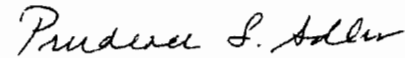
ALA and ARL believe the proposed changes to the mandatory copyright deposit of and access to published electronic works available only online appropriately recognizes and responds to changes in technology and will aid the Library of Congress as it continues to build a national library that represents all types of works, including those that are electronic.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lynne E. Bradley".

Lynne Bradley
Director,
Office of Government Relations
American Library Association

Respectfully submitted,

A handwritten signature in cursive script, reading "Prudence S. Adler".

Prudence S. Adler
Associate Executive Director,
Federal Relations and Information
Policy
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