



**Statement of
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**On Behalf of the
American Association of Law Libraries
American Library Association
Association of Research Libraries
Medical Library Association
Special Libraries Association**

**H.R. 107, Digital Media Consumers' Rights Act
Subcommittee on Commerce, Trade and Consumer Protection
U.S. House of Representatives
Committee on Energy and Commerce
May 12, 2004**

I am speaking today on behalf of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association and the Special Libraries Association. Collectively, our five national associations represent over 85,000 librarians and thousands of libraries across the country. Our Nation's libraries spend hundreds of millions of dollars each year on all forms of digital information and thus rank as one of the largest single consumer groups of digital products. We urge you to support HR 107, the Digital Media Consumers' Rights Act.

Libraries have played and continue to play a critical role in our country, serving as access points to their collections and services and as preservers of current and historical information. Our country's copyright law traditionally has aimed for a balance that accommodates both the ability of the copyright owner to exploit his or her works commercially and the societal need to use those works for

education, research, and public knowledge. Accordingly, there are some circumstances where the law provides for certain uses of copyrighted works without permission from the copyright holder.

These provisions -- for libraries and schools -- include:

1. Fair Use, which allows us -- or anyone -- to copy portions of works for teaching, criticism, and reporting.
2. First Sale, which allows us to lend books in our collections to patrons.
3. Special library exceptions, which permit copying of copyrighted works by libraries for preservation and inter-library loan purposes.
4. The TEACH Act, which permits limited performances or displays by non-profit educational institutions for distance education.

These statutory provisions reflect two fundamental values that underlie our copyright system: fairness and freedom. Fairness, in that a person who buys a copy of work should be able to use the work fully; and freedom, in that the freedom of expression protected by the First Amendment can exist only if copyright does not shackle the dissemination of information.

When Congress passed the Digital Millennium Copyright Act in 1998, it provided additional protections for copyright owners, but it omitted corresponding allowances for fair use and other exceptions. Professor Peter Jaszi in his testimony today has vividly described the effects of these legal changes. Libraries believe that the Digital Media Consumers' Rights Act is needed to redress those changes -- to restore a proper balance in copyright law between the rights of copyright users and the rights of copyright owners -- a balance that is essential to the future conduct of research and education in the digital age.

Let me give you just a few examples:

H.R. 107 would make it possible for libraries to go around copy protection mechanisms in DVDs or CD-ROMs to make a copy for preservation or archiving. Remember that libraries and archives must be able to make such preservation copies well into the future, as digital storage formats become obsolete. Preservation of knowledge is a core mission of libraries.

H.R. 107 would permit foreign language teachers to circumvent technological access controls so that digital works purchased abroad can be played on electronic devices purchased in this country.

H.R. 107 would allow a university professor to bypass a digital lock on an e-book so that she can perform a computerized content analysis on the text.

H.R. 107 would enable a librarian to unlock a technological measure to make a copy for a library patron or for inter-library loan or electronic reserve purposes.

Significantly, each of the examples involves a copy paid for by a library and a use otherwise permitted by the Copyright Act. And since many library and educational institutions are publicly funded, these examples demonstrate that H.R. 107 would allow taxpayers to receive the full benefit of their significant investment in copyrighted products.

The DMCA does include an exemption, 17 U.S.C. Section 1201(d), directed at nonprofit libraries, archives, and educational institutions. Unfortunately, this exemption is so narrow as to be meaningless. It allows a library to circumvent a technological access control for the sole purpose of determining whether the library wants to acquire a copy of the work. The library and educational community never identified this as a problem and never requested this exemption. I suspect that it was inserted for the purpose of permitting certain proponents of the DMCA to argue that library concerns had been addressed.

Further, the DMCA includes a rulemaking procedure by which the Librarian of Congress, every three years, can adopt additional exceptions to the anti-circumvention provision. The library community has actively participated in the two rule-making cycles, and concurs with all the problems identified by Professor Jaszi in his testimony. The Copyright Office, charged with recommending the exemptions to be adopted, has interpreted and applied the standards set forth in the statute so narrowly as to ensure the denial of almost all the exemptions requested. The Copyright Office places on the proponents of an exemption a far heavier evidentiary burden than Congress required of the proponents of the DMCA prior to its enactment. Further, the statutory scheme of the exemption process is flawed because while it permits exemptions for acts of circumvention, it does not permit exemptions for the manufacture and distribution of circumvention tools. Thus, even if a person obtains an exemption, he or she will not be able to obtain a tool that allows the exemption to be used. The rulemaking procedure is impractical and ineffective.

In sum, the DMCA is broken, and it needs to be fixed. Libraries fear that they are spending hundreds of millions of dollars a year for products that they might not be able to use. They worry that they may not be able to share those products fully with the millions of patrons for whom they were bought. They worry that they are unable, through restrictions in law and through technological measures, to make preservation copies of their digital resources. Moreover, some fear that the law combined with technological locks will lead to "pay per view" as the way of the future, that "metered use" will be imposed upon all digital materials, that the "digital divide" will widen even more. Such a scenario is not acceptable in a society such as ours, which is founded upon the principle that "information is the currency of democracy."



The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

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

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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. Its mission is to shape and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to and effective uses of recorded knowledge in support of teaching, research, scholarship and community service.

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The Medical Library Association (MLA), is a nonprofit, educational organization, comprised of health sciences information professionals with more than 4,700 members worldwide. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public.

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The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 83 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives. Contact: Doug Newcomb (202-939-3676)