

Public Comment submitted on behalf of the Ohio Library Council

Date: October 15, 2013

Docket Number: 130927852-3852-01

RE: Response to Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy.

Please find attached the comments of the Ohio Library Council submitted in response to the request for comments and notice of public meeting on the Department of Commerce's Green Paper: Copyright Policy, Creativity, and Innovation in the Digital Economy released on July 31, 2013. The Ohio Library Council requests that the attached be included in the record of comments in response to said request.

1. The Ohio Library Council ("OLC") is an Ohio-based trade association of public libraries, librarians, and public library trustees. It has assumed the role of national leader on the issue of public library access to digital content. The OLC has galvanized support for this cause from public libraries across the country, and seeks to remedy, through federal legislation, library users' lack of access to information occasioned by the publishing industry's actions in placing severe limitations on access to digital content.
2. Traditional application of the "first sale" doctrine allows the purchaser of a lawfully acquired copy of copyrighted material to lend or even resell that copy. This doctrine has served public libraries—and the American public—well within the realm of hard copy materials. However, despite the availability of clear protections afforded by technology, the nation's largest publishers have systematically placed severe limits on the ability of public libraries to obtain access to and to lend digital content, i.e., e-books. Publishers have, in essence, avoided application of the first sale doctrine by structuring their e-book transactions with libraries as "licenses", instead of as "purchases." The end result has been that library users everywhere have been broadly and unfairly denied access to content. Given the fast growing acceptance and usage of digital content, this denial of access to information is likely to be compounded in the years ahead.

The growing popularity of e-books (a popularity which seems destined to expand as cultural norms change), coupled with the reluctance of publishers to permit libraries to access and lend digitally formatted e-books, represents a serious threat to the long-term viability of public libraries, and to the principal that information should be available to all, whether or not they can afford to buy a copy of a book.

While the digital challenge facing libraries may well call for a federal legislative fix, the specifics of that fix should be weighed heavily. The Ohio Library Council suggests that the aforesaid dilemma be resolved through specific legislative changes to Title 17 of the

United States Code, Section 108 of the Copyright Act, which would extend the protections of the lending right implicit in the first sale doctrine to copies of digital content lawfully acquired by public libraries, and which would preempt any contrary limitations attempted to be placed upon public library usage by contract. Complementary changes would be necessary to Section 1201 of the Copyright Act (17 United States Code Section 1201) to permit libraries to circumvent technological controls which impinge on the first sale doctrine lending rights granted libraries, as contemplated above, in copies of digital content.

3. The Ohio Library Council respectfully requests that it, or another similarly situated entity positioned to advocate for public library access to digital content, be invited to participate as a stakeholder at the initial public meeting on October 30, 2013.