



Libraries, Contract, and Copyright

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Introduction

- Contract Override of Copyright
 - Context - Section 108 of the Copyright Act
- Examples of Restrictions on Contract Override
- Expanding the discussion
- Where to go from here

Section 108

- Introduction

Section 108(f)(4)

(f) Nothing in this section--

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

108(f)(4)

- Legislative History
- Current business practices - Licensing
 - Result – Locked Collections
- Increasing reliance on licensed digital works
 - Change in ABA standards

Section 108 Review

- **Review of Section 108 – on and off for 20 years**
 - Section 108 Study Group – appointed in 2005, report March 2008
 - Copyright Office Symposium 2013
 - Hearing – 2014
 - Copyright Office conversations with interested persons - 2016

Copyright Office Discussion Document

- **September 2017 Copyright Office Discussion Document**
 - Outlined Copyright Office views and proposals

Proposed Section

(k) RELATION TO OTHER PROVISIONS OF TITLE 17, AND TO CONTRACTUAL OBLIGATIONS.—

(1) This section does not in any way affect the right of fair use as provided by section 107.

(2) This section does not in any way affect any contractual obligations assumed at any time by the eligible institution when it obtained, or licensed the use of, a copy or phonorecord of a work in its collection: *Provided*, that the eligible institution is not liable for infringement under this title for violating any nonnegotiable contractual provision that prohibits the making of preservation or security copies, as those activities are permitted under subsection (c).

Proposed Section

- **Copyright Office interpretation**
 - Covers licenses, all contracts
 - Non-negotiable contracts
 - Not liable for infringement; may be liable for breach of contract
 - Sanctity of Contract

Further Discussions

- 2023 Symposium on Protecting Copyright User Rights from Contractual Override
- 2024 ALA Program - When copyright and contracts collide: Advocacy to advance library and user rights

Examples of Restrictions on Contract Override

- **States**
- **Other Countries (U.K. etc.)**
 - **Examples – U.K.**
 - **To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.**
 - **Copying by librarians: supply of single copies to other libraries**
 - **Copying by librarians etc: replacement copies of works**

Example - UK Amendments

- **Reasons for new provisions**
 - **Effect of contractual provisions on libraries**
 - **Benefits to Society**

Further Discussion

- **Exploration of contrasting treatment of contract override provisions**
 - Concern about effects of contract override
 - Sanctity of contract
- **AI?**

Where to Go From Here

- **Recommendations?**