The Honorable Bob Goodlatte  
Chairman, House of Representatives Judiciary Committee  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515  

August 16, 2016  

Dear Chairman Goodlatte,

We write on behalf of the University of Virginia Library, the William & Mary Libraries, the Virginia Tech Libraries, the George Mason University Libraries, and the Virginia Commonwealth University Libraries to provide input as you consider copyright reform. We appreciate that you are interested in finding areas of consensus for revision, and we ask that in doing so you follow the Hippocratic principle Primum non nocere — “First do no harm.”

As librarians, we take very seriously our mission to enable access to information for our students, faculty, and the broader public. These activities rely on a stable interpretation of Section 108 of the Copyright Act, “Limitations on exclusive rights: Reproduction by libraries and archives,” which allows us to conduct core library functions. We also need full access to our rights under the fair use doctrine, codified at Section 107, to allow for flexible innovation in cutting edge library activities. We are concerned that efforts to re-litigate Section 108 and the fair use doctrine could endanger important protections that enable access and preservation of information, and we urge caution in considering copyright reform relevant to libraries.

As you are likely aware, the Copyright Office has recently undertaken an abbreviated review of Section 108 to provide input into your reform considerations. We are concerned that the Office’s current process may not be the best approach for seeking consensus, which has proved elusive over the past decade. Notably, the Office has chosen to proceed despite
widespread opposition from libraries. While Section 108 may show its age in some ways, it adequately protects core library activities like preservation and interlibrary loan, and includes enough flexibility to accommodate digital innovation, especially in combination with Section 107, the fair use doctrine. Including Section 108 in any major copyright revision is not worth the substantial uncertainty it would create for libraries.

Our libraries make substantial investments in content that is held in trust for the public. The University of Virginia Library, for example, spent $9.9 million acquiring materials in FY 2014–15, and invested more than $1 million in the preservation of those materials. We make the most of these investments by engaging in a wide variety of preservation, interlibrary loan, and other document delivery activities enabled by Section 108 and fair use.

Our libraries are no strangers to cutting edge digital activities. As detailed below, we have been innovative in preserving and providing access to our collections to ensure their availability for research purposes long after these works may otherwise have disappeared completely. We believe library activities like these are more likely to be curtailed than encouraged by a contentious and unnecessary revision of Section 108:

- We are preserving rare collections like the trove of television footage (13,000 clips of 16mm film) and scripts (18,000 pages) from Roanoke NBC affiliate station WSLS, which UVA librarians migrated to searchable, digital format with help from a $254,600 We The People grant from the National Endowment for the Humanities. The collection documents life in Roanoke, Virginia, between 1951 and 1971, from civil rights activism to soapbox derbies.

- At Virginia Commonwealth University, photographs taken during Civil Rights protests in Farmville by law enforcement during the summer of 1963 were digitized and placed online in the Freedom Now project. The project garnered wide community participation with its outreach to participants in the protests, many now elderly, to identify people in the photos.

- William & Mary Libraries has been digitizing analog choir recordings from the University Archives that were originally stored on at-risk reels. We have worked with volunteer alumni to identify singers in the photographs and match recordings with paper ephemera in the collection without risking the original reel tapes. Using the 108
exemptions, we have preserved institutional history, connected with alumni in the choir, and documented student activities on our campus between 1946 and 1983.

- At George Mason University, the vast media collection (6,000 VHS tapes) and associated research codebooks from the Center for Media and Public Affairs have recently been acquired by the Libraries. The tapes will be converted to archival formats and augmented with rich descriptive metadata, so researchers will have ready and enduring access to a carefully curated and annotated trove of U.S. TV network and other broadcasts relating to national policy and public affairs dating back to the mid-1980s.

- Virginia Tech Libraries offers preservation services, including web archiving, to enable long-term access and use of materials in our digital repositories and collections. These curatorial services undergird our ability to serve as effective stewards of research and scholarly materials in digital format or that have been converted from analog to digital.

- Our University Archives routinely capture university webpages and media stories about our institutions, following the same practices and norms that govern print or analog materials. Web archiving practices vary from project to project, and from institution to institution, but fair use gives us the flexibility to meet our missions in this area. We see no need for revision to Section 108 to accommodate current or longer-term web preservation activities.

- In addition to our extensive preservation activities, our libraries have been pioneers and leaders in the growing field of digital humanities (DH), which uses technology tools to gain insights into humanities fields like English literature. From the UVA Scholars Lab to the digital scholarship center at GMU, library services make content available in accessible formats for cutting edge research, teaching, and learning.

- Finally, through collaborative efforts like the HathiTrust Digital Library and the Digital Public Library of America, our libraries are working with partners around the country (and around the world) to expand the possibilities for digital research.
We realize copyright reform has been under discussion for several years, now, and that you and others are interested in making progress in areas where consensus can be found. It is extremely unlikely that any consensus could be reached on revisions to Section 108 or Section 107, and we hope you will avoid any contentious and damaging changes to Section 108 and the right of fair use in your reform effort. As Chairman of the House Judiciary Committee, we urge you to consider our concerns as the Committee works with the Copyright Office and others on this or any future changes to Copyright Law. We welcome you to consider our libraries a resource in any process relating to copyright reform.

With best regards,

Carrie Lynn Cooper, Dean of University Libraries
College of William & Mary

John E. Ulmschneider, University Librarian
Virginia Commonwealth University

John M. Unsworth, University Librarian and Dean of Libraries
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