Digitization projects offer important opportunities for libraries to expand the reach and usability of their collections. Through digitization, unique collections can be made available to a wider audience, works can be made searchable, and wear and tear on fragile tangible materials can be reduced. As technology has advanced, so have digitization efforts by libraries and other organizations.

In 2005, the Authors Guild and the Association of American Publishers sued Google, claiming that the Google Books project constituted copyright infringement. In 2011, the Authors Guild also sued HathiTrust for copyright infringement. In these cases, courts both at the district court level and on appeal have found that the mass digitization projects at issue are protected by the Section 107 fair use affirmative defense.

In light of this litigation, the United States Copyright Office began to study issues relating to mass digitization projects, issuing a preliminary analysis in October 2011 and a report in June 2015. In June 2015 the Copyright Office issued a request for comments on a proposed pilot program and draft legislation designed to create an extended collective licensing (ECL) system for mass digitization projects.

In the Copyright Office’s proposal, collective management organizations (CMOs), such as ASCAP and the Copyright Clearance Center, would apply to the Register of Copyrights for authorization to issue licenses and collect fees for mass digitization projects. CMOs would have to certify that they represent a significant proportion of rightsholders in a particular field, and would be granted authority to issue licenses pertaining to a specific category of works on behalf of both members and non-members. Individual copyright owners would also be able to limit or opt out of collective licensing. CMOs would then be required to distribute royalties in a timely fashion, including conducting searches for non-members.

AALL opposes the Copyright Office’s Extended Collective Licensing proposal because:

- **Mass digitization does not need a sui generis solution.** Recent cases involving mass digitization show that mass digitization projects are already protected by the Section 107 fair use defense; further, libraries may digitize for preservation or to provide access to the blind or disabled. Unlike orphan works, mass digitization projects can be accommodated by proper application of current copyright law. Under the proposed ECL model, libraries will likely be pressured to pay licensing fees for uses allowed by existing copyright exceptions.

- **The ECL proposal improperly shifts power to collective licensing organizations and copyright owners.** The Copyright Office’s proposal would grant CMOs monopoly power over licensing use of a particular category of works, creating a system by which CMOs can unilaterally dictate license costs. Libraries and other users would be at the mercy of CMOs, for-profit entities with little incentive to balance the rights of users against those of rightsholders.

- **The ECL proposal relies upon a model that does not translate to the U.S.** The Copyright Office bases its ECL proposal upon models in small countries with a strong history of collective bargaining. This model is not scalable to the United States, which has the largest copyright industry in the world and little history of successful collective bargaining.

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