

# Digital Preservation and Copyright in the United States

June M. Besek

Executive Director

Kernochan Center for Law, Media and the Arts

Columbia Law School

A stylized silhouette of a mountain range in shades of teal, located at the bottom right of the slide.

# Section 108 Study Group

- ◆ Independent group
- ◆ Convened by US Library of Congress/NDIIPP and US Copyright Office
- ◆ Goal: To re-examine exceptions for libraries in Section 108 and make recommendations for amending the law for the digital age

# Section 108 Study Group

- ◆ 19 members, mostly from library/archives community and right holder community
- ◆ Report issued March 2008
- ◆ Report available at <http://www.section108.gov>.

# Shortcomings of Current US Law

- ◆ No copying of published works in library's collection until damaged, deteriorating, lost, stolen or obsolete format
- ◆ 3-copy limit
- ◆ No copying for acquisition (creates problems for preserving internet content)

# Recommendations

New exception for proactive preservation of at risk publicly disseminated works in library's collection

- Only for libraries qualified for digital preservation
- Must use best practices for digital preservation
- Must restrict access to preservation copies

# Recommendations

New exception for preservation of publicly available internet content

- \* publicly available=unrestricted
- \* opt out by right holders permitted
- \* library may allow on-premises access, and after a reasonable time, off-premises access

# Recommendations

Recommended changes to existing replacement provision include:

- ◆ Changing 3-copy limit
- ◆ Adding “fragile” as a trigger

# Recommendations re Eligibility

- ◆ Add functional requirements
- ◆ Museums should be eligible
- ◆ Use of outside contractors permitted, with restrictions to protect right holders



# Section 108 Study Group: Recommendations/Open Areas

- ◆ Recommendations made on unanimous consensus basis
- ◆ They reflect concerns on all sides, and compromise
- ◆ Expanding exceptions in some areas may mean restricting, or at least not expanding, in others

# Section 108 Study Group Report

- ◆ High level recommendations, open areas
- ◆ The report goes into detail about the concerns in various areas and why it was difficult to reach agreement.
- ◆ Many other recommendations
- ◆ Full report at <http://www.section108/gov>.

# Section 108 Group Report: What's Next?

- ◆ Report was sent to the Copyright Office at the end of March.
- ◆ Copyright Office will review and decide how to move forward
  - May solicit additional input
  - Even in areas of agreement, open issues
  - Unlikely to propose legislation before 2009.