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Sarang Vijay Damle
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
sdam@loc.gov

Re: Mandatory Deposit of Electronic-Only Books (Docket ID: COLC-2018-0002)

Dear Mr. Damle:

The University of Michigan Library Copyright Office is pleased to submit this comment on behalf of the University of Michigan Library (“U-M Library”).

The U-M Library’s mission is “to support, enhance, and collaborate in the instructional, research, and service activities of the faculty, students, and staff, and contribute to the common good by collecting, organizing, preserving, communicating, and sharing the record of human knowledge.”¹ The Library does not only provide access to publications but also supports their production, for example as parent of the University of Michigan Press, a scholarly book publisher

The U-M Library strongly supports the regulations proposed in the April 16, 2018 Notice of Proposed Rulemaking on Mandatory Deposit of Electronic-Only Books (Docket ID: COLC-2018-0002).²

¹ *About the Library*, University of Michigan Library, <http://www.lib.umich.edu/about-library> (last visited July 13, 2018).

² Mandatory Deposit of Electronic-Only Books, 83 Fed. Reg. 16,269 (proposed Apr. 16, 2018) (to be codified at 37 C.F.R. pt. 202).

In our comment in response to the May 17, 2016 Notice of Inquiry,³ we explained that we have repeatedly encountered books that we cannot acquire for our library because of how they are published (e.g., subject to End Use License Agreements that allow only personal use of those works).⁴ This continues to be a problem. For instance, we are concerned about self-published fiction that is available only on Amazon's Kindle platform. Our inability to acquire it creates a significant gap in our collection of contemporary fiction. We are also concerned about the challenges of preserving and providing long-term access to enhanced scholarly ebooks, especially the increasing number that contain multimedia components.

We welcome the proposed regulations because they provide a means for the Library of Congress to acquire such works, preserve them, and provide limited access to them. In particular, we support applying the current access policies for newspapers deposited in electronic format to electronic-only books and serials, we support the proposed definition of "electronic-only book," we support use of the Library of Congress's Recommended Formats Statement as the basis for the Best Edition criteria, and we support maintaining the requirement (within the Best Edition criteria) to remove technological measures that control access to or use of the work from deposit copies of electronic-only serials and extending it to electronic-only books.

The access policies first adopted in January 2018 for digitally deposited newspapers⁵ are also appropriate for electronic-only books and serials. While we would still like to see broader access than the two-at-a-time on-site access provided for there, this change nonetheless represents a significant improvement of the Library of Congress's ability to provide access to electronic-only books, so we support it.

We also support the proposed definition of "electronic-only book."⁶ In particular, we appreciate that it does not define electronic-only books based on file format or

³ Mandatory Deposit of Electronic Book and Sound Recordings Available Only Online, 81 Fed. Reg. 30,505 (May 17, 2016).

⁴ Univ. of Mich. Libr. Comments on Mandatory Deposit of Electronic Book and Sound Recordings Available Only Online (Aug. 18, 2016).

⁵ 37 C.F.R. § 202.18 (2018).

⁶ Mandatory Deposit of Electronic-Only Books, 83 Fed. Reg. at 16,275 (defining "electronic book" as "an electronic literary work published in one volume or a finite number of volumes published in the United States and available only online," excluding "literary works distributed solely in phonorecords (e.g., audiobooks), serials (as defined in § 202.3(b)(1)(v)), computer programs, websites, blogs, and emails").

method of distribution, as such a definition would quickly become outdated due to changing technology.⁷

We endorse the proposal to use the Library of Congress's Recommended Formats Statement as the basis for the Best Edition criteria for both electronic-only books and electronic-only serials. We also applaud the proposal to add clarifying language in the criteria on the submission of updates, supplements, and the like. Both of these measures will greatly aid the long-term preservation of electronic-only works for the future.

Finally, we are especially pleased to see that the Best Edition criteria for electronic-only serials will continue to require that technological measures that control access to or use of the work be removed from deposit copies and that this requirement will be extended to electronic-only books.⁸ From the preservation work we do here at the U-M Library, we know that such technological measures seriously impede long-term preservation.

For these reasons, we support adoption of the regulations proposed in Mandatory Deposit of Electronic-Only Books. We hope to see similar action on electronic-only sound recordings in the future.

Respectfully submitted,

Ana Enriquez
Copyright Specialist

⁷ Because the authority for this rule comes from 17 U.S.C. § 407(a), which covers mandatory deposit of published works, it is appropriate for the definition of "electronic-only book" in this case to cover only materials that are published within the meaning of the Copyright Act. We anticipate an increase in new books that never qualify as published because they are only ever made available through online public display, rather than download. Thus, we hope the Copyright Office will consider in the future using the rulemaking authority provided by 17 U.S.C. § 407(e) to enable the Library of Congress to acquire such books, which would appear to qualify as "transmission programs" within the meaning of the Copyright Act.

⁸ *Id.*