COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON THE MAY 29, 2025, DISCUSSION DRAFT OF THE FRAMEWORK FOR THE AMERICAN COPYRIGHT PROTECTION ACT

The Library Copyright Alliance ("LCA") consists of the American Library Association and the Association of Research Libraries. These two library associations represent the interests of over 100,000 libraries in the United States employing more than 250,000 librarians and other personnel.

LCA appreciates the opportunity to comment on the May 29, 2025, discussion draft of the framework for the American Copyright Protection Act ("ACPA"). Although the discussion draft addresses our concerns about operational impacts on libraries, we remain troubled about other aspects of the draft that could inhibit the free flow of information and adversely affect library users.

1. Definition of Service Provider. LCA strongly supports the discussion draft's exclusion of premises operators such as libraries and universities from the definition of "service provider." The discussion draft correctly recognizes that entities that acquire internet service from a provider to enable patrons to access the internet from their premises or devices should not be required to block access to foreign sites.

2. Shifting the Forum to the ITC to Prevent Over-Blocking. Although this exclusion means that libraries would not themselves have to shoulder the burden of site blocking, LCA remains concerned that ACPA's no-fault injunction structure could lead to over-blocking that could restrict access to information and thereby harm library users. It is likely that most ACPA cases will be resolved by default judgments; the foreign target sites typically would not appear in U.S. court to challenge their designation as foreign piracy sites, even if they do not meet the statutory definition. Moreover, service providers are unlikely to oppose the scope of a blocking order on the grounds it might apply to innocent third-party sites; a service provider's objective would be to implement the blocking in the most expedient manner possible, regardless of possible over-blocking.

To be sure, the framework provides a mechanism for challenging a blocking order after-the-fact, but by then significant damage would already have been done. Additionally, the affected users might not have resources to request the court to modify a blocking order. And, as discussed in the roundtables, the proposed structure might not be constitutional because it would lack the adverse parties required by Article III. A special master likely would not provide adversity sufficient to cure this constitutional defect, nor would it adequately protect the interests of users not in court.

A more appropriate forum for blocking actions was suggested by Chairman Issa's Online Protection and Enforcement of Digital Trade Act of 2012, which would have modified the International Trade Commission's ("ITC") section 337 proceedings to target the flow of funds to

foreign piracy sites. Likewise, section 337 could be modified to enable the ITC to conduct *in rem* site blocking proceedings against the foreign target sites, followed by blocking orders against service providers. Because section 337 proceedings are designed to exclude products that infringe intellectual property rights, ITC administrative law judges already have expertise in intellectual property. The staff of the ITC's Office of Unfair Import Investigations would represent the interests of the ITC and the public throughout the course of the site blocking proceedings, as it now does in section 337 proceedings. The staff's ongoing involvement would help prevent over-blocking. Significantly, the ITC is equipped to order temporary relief, so it could act quickly to protect the interests of copyright owners.

We understand the Subcommittee's concern that shifting the forum of the proceedings from the federal courts to the ITC might raise jurisdictional issues. Nonetheless, the ITC is a much more appropriate forum, for the reasons explained above, and a site blocking procedure based on section 337 is far more likely to be found constitutional than that proposed under the discussion draft. We are confident that the Subcommittee could find a way to develop an ITC site blocking proceeding in cooperation with other committees of jurisdiction.

3. The Totality of the Circumstances Standard. Regardless of the forum for site blocking proceedings, the standard by which a court--or the ITC--determines whether to impose a blocking order on a particular service provider must be far more rigorous than in the discussion draft. In the discussion draft, a court would extend a blocking order to a particular service provider if it determined that the totality of the circumstances weighed in favor of including the service provider. The "potential for incidental harm or interference with sites other than the foreign piracy site" is the only factor that touches on the danger of over-blocking, and it looks at the harm only from the perspective of the target site, not users of the site. The court must give the potentially harmful impact of a blocking order on users significantly more weight.

4. Challenging the Foreign Piracy Site Designation. The discussion draft provides that the court may modify a blocking order "upon a motion, or at its own discretion," if it determines that available evidence indicates that the order's identification of the foreign piracy site is no longer accurate or effective. Users and other third parties should have the unambiguous right to challenge the initial designation of the target site as a foreign piracy site even before a blocking order issues. To facilitate such a challenge, the court should notify the Copyright Office that it has designated a site as a foreign piracy site. Statutory language should also make clear that any user or other third party has the right to file a motion requesting modification of the blocking order because the foreign piracy site designation is inaccurate. Further, users and other third party should have the right to appeal the court's designation of a site as a foreign piracy site.

5. Compensation for Injury. The discussion draft provides for compensation to third parties for injury resulting from the blocking of a site other than the foreign piracy site only "if the third party shows that the copyright owner was the cause of the error that resulted in the blocking of the other site." Limiting compensation only to cases where the copyright owner "caused the error" that resulted in the over-blocking would mean that third parties typically would receive no compensation for their injuries. Most over-blocking would likely be caused by Internet architecture, e.g., multiple sites sharing the same IP address, rather than an error by the copyright owner. Copyright owners should be liable for all injuries resulting from the blocking orders they seek, regardless of the precise cause of the overblocking.

6. Sunsetting ACPA. During one of the roundtables, Chairman Issa mentioned the possibility of the site-blocking legislation sunsetting after a set number of years. We favor sunsetting the legislation after five years. While the proposed GAO studies might provide some information about the legislation's effects as implemented, a sunset would require Congress to engage in a more careful review of the impact of the legislation than GAO studies alone.

We look forward to continue working constructively with the Subcommittee on this matter.

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