

# ***Libraries, Contract, and Copyright***

*D.R. Jones*

University of Memphis Cecil C. Humphreys School of Law

Section 108 of the Copyright Act provides exceptions for certain library uses of copyrighted materials. Section 108(f)(4) provides, however, that the provisions of Section 108 do not affect “any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.” As copyrighted works have become digital, copyright holders have chosen to adopt a business model of licensing rather than selling these works. Through contract, copyright holders have limited or eliminated exceptions for library use of copyrighted works. Over the past 20 years, there have been reviews of Section 108, including section 108(f)(4). For example, the Section 108 Study Group convened in 2005 and issued a final report in 2008. In 2017, the Copyright Office released a discussion document on Section 108. Discussions concerning contract override have continued, including at a User Rights Network Symposium in May 2023 and an ALA program in June 2024. Meanwhile, library reliance on digital works continues to increase. For example, some academic law libraries are accelerating a shift from owning print to accessing current materials in digital format since ABA standards no longer require that a law library hold print books.

This paper will examine and review the issue of contract override. The paper will include consideration of laws in the United Kingdom and other countries. The paper will offer recommendations.