copyright alliance

POSITION PAPER

Government–Mandated Business Models and Initiatives

The Copyright Alliance supports competition in the marketplace and recognizes that having a wide variety of works of original expression made available through diverse business models—with copyright playing its role to incentivize creativity and commerce—increases competition and provides the greatest degree of choice for consumers. While we appreciate the value that "open access" business models and "open source" content and software can contribute to the mix, we oppose them when they are imposed as mandates from federal or state governments that unfairly compete with private investments and inappropriately interfere with competitive markets for copyrighted works and devalue the rights granted to creators of such works under federal copyright law.

Specifically, we oppose any government mandates or initiatives that:

- demand copyright owners of works reporting on government–funded activities afford free public access to them without proper compensation;
- require rights holders, whether funded through government grants or not, to offer their works in the marketplace under restrictive conditions;
- favor certain businesses and business models by allowing unfettered access to copyrighted works of others; or
- allow the government or third parties supported by the government to compete against creators in the marketplace.

Examples of mandates or initiatives opposed by the Copyright Alliance include: (1) open educational resource and technology development initiatives in which governments use taxpayer funding to compete with a private sector that is already fueling competition and innovation in the marketplace; (2) legislation that requires final manuscripts of peer–reviewed, private sector journal articles reporting on already

accessible federally-funded research to be made freely available in a manner that adversely affects a journal publisher's ability to recoup its investment and its incentive to invest in the peer review, publication and distribution of these journal articles; (3) government mandates that require software and other copyrighted technologies and works developed or procured by the government to be available for free or under an open source license; and (4) regulations that enable third-party manufacturers of cable hardware to freely access and package unlicensed copyrighted works.

These government mandates and initiatives severely upset the balance of public interests in allowing public access to creative works and rewarding the inspired efforts of their creators

Under such edicts, copyright owners are unable to freely utilize the full scope of their exclusive rights and to enjoy them for the length of time granted by federal copyright law. Unlike the government, copyright owners need to recoup their investments in the creation and marketing of their works. If copyright owners cannot recoup these spent resources, they will not be able to sustain their businesses and careers, will be discouraged from creating and distributing new works for the public to enjoy, and will not be able to uphold the highest standards of quality and integrity in the copyrighted works they produce.

Competitive markets result in better products and services, as well as increased choices for consumers. But undue government interference with these markets has the opposite effect. Markets cannot remain competitive and efficient when federal or state governments interfere in ways that unfairly or otherwise inappropriately favor certain types of business models, products, services, and providers over others. Such interference discourages copyright owners from developing innovative business models, which leads to fewer options for the public to access new copyrighted works as products and services in the marketplace.

When the government puts its thumb on the scale to favor certain business models, or mandates the terms under which works are made available to the public, it undermines the constitutional purposes and goals of federal copyright law and

destroys the existing incentives for copyright owners to create and disseminate creative works to the public. Neither the Constitution nor the Copyright Act authorizes federal or state governments to restrict or eliminate copyright owners' exclusive rights as a condition for the receipt of federal funding or as the basis for achieving any other regulatory objective.