

# Joint Letter to Dr. John H. Gibbons

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November 7, 1996

Dr. John H. Gibbons  
Assistant to the President for Science and Technology and  
Director, Office of Science and Technology Policy  
Old Executive Office Building  
17th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Dr. Gibbons:

We are writing on behalf of the nations major library associations to express our opposition to the draft "Treaty on Intellectual Property in Respect of Databases," supported by the U.S. delegation to the [World Intellectual Property Organization \(WIPO\)](#) and to related efforts to advance the adoption of such a proposal. We share the concerns of the Presidents of the [National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine](#) relating to both substantive and process issues regarding the database proposal. The changes to intellectual property law which such a proposal would facilitate are so sweeping that the U.S. delegation's support for the Draft Treaty should be withdrawn until a complete and thorough national discussion of the merits and/or drawbacks of any related intellectual property proposal are carefully debated and considered.

There are a number of substantive concerns in addition to those included in the Presidents' letter. First, it is well understood that access to data is the lifeblood of science and research, indeed, to the advancement of knowledge. As a consequence, it is critically important to understand the impacts of such a proposal on the U.S. research and education communities. Although many may view the U.S. posture vis-a-vis international treaty negotiations as a strictly legal issue, this should be considered in the context of what constitutes appropriate public policy in support of all interests concerning access to information.

There is a long tradition in the United States of protecting expression but not facts. This tradition is based on an appreciation that such a policy stimulates innovations in the public and private sectors, supports the educational process, and "promote[s] the progress of Science and the Useful Arts." The progress of knowledge is furthered by the reuse of information in other works. We believe that the database proposal would undermine this tradition.

Second, it is of great concern that the database proposal is outside the scope of copyright and focuses only on economic interests. The current copyright framework balances the interests of owners, creators, and users through rights and limitations to those rights. Such exemptions include fair use, first sale, and related provisions. The Draft Treaty contains no such exemptions. In fact, in recent presentations, proponents of the database proposal have stated that inclusion of such exemptions in domestic law would jeopardize database protection by linking it to the Copyright Act. Thus the lack of inclusion of any exemptions for libraries, research, and education in H.R. 3531, "The Database Investment and Intellectual Property Antipiracy Act of 1996," ( the domestic counterpart to the U.S. proposal to WIPO) and recent statements by Information Industry Association representatives supports an extremely bleak view of how members of the academic and research community and the public will access information resources in the future.

It is important to note that there are provisions in the Draft Treaty which would permit member nations

to implement national legislation which could include exceptions such as fair use. Yet neither the U.S. delegation's database proposal to WIPO (May 1996) nor H.R. 3531 contained such exceptions. Thus the combination of the lack of inclusion of these exceptions in the House bill and in the U.S. proposal, with the statements noted previously by representatives of the Information Industry Association, indicates that such exceptions in implementing legislation would not be supported, indeed would likely be opposed, by proponents of the database proposal.

Finally, it appears as if U.S. policy is being driven by concerns over the recently approved European Union Directive. The European Union Directive was issued this past spring following eight years of hearings, discussions, and debate in Europe. It is our understanding that no member countries of the European Union have acted on the Directive. In fact, in a recent presentation, the Executive Director of the European Association of Information Services noted that it is considered unlikely that all European Union nations will implement the Directive by 1998. Thus the rush to support such a proposal internationally when implementation has yet to occur is both curious and confusing. Would it not be wise to wait and see what effects the database directive may have on different communities once it is implemented in Europe? Clearly time remains to engage in a consultative process to explore the needs of all communities, nationally and internationally.

The compromise that was achieved at the last Congress of the World Meteorological Organization is instructive and suggests a different approach to the U.S. position on the database proposal. The compromise in essence rolled back European proposals for additional protections and resulted in the agreement that certain categories of data will remain open and unrestricted. We suggest that the U.S. engage in similar discussions with members of the European Union regarding a new legal form of database protection.

As we have noted in earlier correspondence, it is premature to engage in and conclude an international norm-making process regarding database protection prior to any domestic discussion. There were no opportunities to comment upon the original U.S. proposal before it was formally presented to WIPO in May. In addition, there were no hearings on H.R. 3531, and no companion bill was introduced in the Senate. An important consideration in formulating our position is the lack of consultation with affected constituencies in the public and private sectors regarding the impact of such a proposal. If such consultation had occurred, there might be greater appreciation for the need for such a new regime, what economic losses the information industry has faced or anticipates in the future that requires such a radical departure from current practice, and clarification of the meaning of many provisions included in the Draft Treaty and in H.R. 3531. Such a process would also identify and evaluate the impacts of this new form of legal protection of databases on the ability of libraries to effectively serve their users. For example, will the creation of this new regime result in new licensing practices and increased costs to libraries?

The Draft Treaty under consideration by members of WIPO or other models to achieve protection of these resources should only move forward following a full and thorough review of the costs and benefits to all communities. Such a review has not occurred and it is not possible to complete one prior to the commencement of the WIPO treaty negotiations on December 2, 1996. As a consequence, we are deeply troubled that the U.S. delegation continues to pursue the Draft Treaty internationally prior to eliciting domestic comment and potentially, consensus.

We would welcome the opportunity to meet with you to discuss these concerns. Please let us know if there is additional information that we can provide.

Sincerely,

Duane E. Webster  
Executive Director

[Association of Research Libraries](#)

Carol C. Henderson  
Executive Director, [Washington Office](#)  
[American Library Association](#)

Robert Oakley  
Washington Affairs Representative  
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cc: Bruce Alberts, [National Academy of Sciences](#)  
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**Last Modified:** August 19, 2001