

One Pager on the Testimony of James G. Neal

The statement of James G. Neal, Director of the Milton S. Eisenhower Library, Johns Hopkins University is presented on behalf of five library associations. Access to information is the foundation for new knowledge and economic innovation. The preservation and continuation of balanced rights and privileges in the electronic environment is essential to the free flow of information, the development of an information infrastructure that serves the public interest, and to the continuation of a productive marketplace. A initial reading of this legislation surfaces many concerns. H.R. 2652 appears to be overly broad and may sweep in far more than the intent of the drafters. Thorough analyses of the legislation and its impact on numerous communities should be undertaken prior to acting on this legislation. The library community has five major concerns with the legislation.

- **There continues to be no compelling research detailing the need for new protections.** There has been no demonstrated need for new intellectual property protections for "electronic collections and other collections of factual material." Many in the not-for-profit and commercial sectors believe that adequate forms of protection exist - copyright, contracts, and increasingly, technological measures.
- **The legislation encompasses a vast array of information, in part because provisions in the legislation go well beyond the traditional misappropriation doctrine.** The prohibitions in this legislation would go beyond the sphere of competition, to reach the activities of individual consumers and not-for-profit institutions such as libraries. This casts a wide net, has potentially serious consequences to libraries as providers of information services, and could conceivably chill the legitimate use of databases and related collections.
- **There are no definitions of key terms which are needed to understand the full scope of the legislation.** Key terms are not defined in H.R. 2652. To fully appreciate the impact of this legislation on the library community, it will be important to include the definitions of key terms. The definition of information included in the legislation would sweep in a vast array of information products and services. It will be important to evaluate the overlap between the coverage of H.R. 2652 and that of copyright. The effect of the proposed legislation, could be to prevent libraries and their patrons from pursuing legitimate functions permitted today. Since H.R. 2652 is designed to "protect" investment rather than creativity, the long and important tradition in the United States of protecting expression not facts will be undermined. This tradition is based on an appreciation that such a policy stimulates innovations in the public and private sectors, supports the educational process, and "promotes the progress of Science and the useful arts."
- **The exceptions and exclusions included in the legislation require additional definition to be meaningful.** Unlike the Copyright Act, which includes numerous exemptions and limitations in support of education and libraries, there are no comparable exemptions in H.R. 2652. Given the extremely broad definition of information included in H.R. 2652, much of what libraries are able to accomplish due to the exemptions and limitations in the Copyright Act could be undermined. Would it be possible to fashion meaningful provisions for the not-for-profit, education, and research communities?
- **The provision relating to government information requires modification to ensure a continued, robust public domain and to ensure that governmental works are not copyrighted.**

Section 1203 is a positive provision but amplification is required. One reading of this legislation is that it would permit private parties to compile collections of non-copyrightable government information and assert protection over them. When coupled with seemingly perpetual protection, the proposal could significantly reduce the amounts and types of information in the public domain.

At the recent W.I.P.O. meeting, many countries expressed significant concerns or opposition to a new

database regime. Few European countries have implemented the European Union directive on databases. There is time to fully consider the consequences and needs of our communities without reacting international efforts.

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