

# Statement of James G. Neal

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on behalf of the:

**American Association of Law Libraries  
American Library Association  
Association of Research Libraries  
Medical Library Association  
Special Libraries Association**

**Before the Subcommittee on Telecommunications, Trade, and Consumer  
Protection House Committee on Commerce**

**Regarding H.R. 1858, the Consumer and Investor Access to Information Act of  
1999**

June 15, 1999

Mr. Chairman,

I am James G. Neal, Dean, University Libraries, Johns Hopkins University and Past President of the Association of Research Libraries and a current member of the Executive Board of the American Library Association.

I am testifying today on behalf of the nation's major library associations: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. Collectively, we represent 80,000 librarians in research, academic, medical, public, law, state-based, and special libraries throughout North America. Thank you for the opportunity to appear before the Subcommittee to share our views of H.R. 1858, the Consumer and Investor Access to Information Act of 1999.

Mr. Chairman, we very much appreciate the leadership role that you, members of the Subcommittee, and the full Committee on Commerce have taken on issues relating to access to information in the digital environment. The preservation and continuation of balanced rights and privileges in the electronic environment are essential to the free flow of information and to the success of our library and education systems.

H.R. 1858, the Consumer and Investor Access to Information Act of 1999 strikes a balance between the interests of selected database producers while ensuring that legitimate and appropriate access to factual information continues. Data and information are the foundation of all research, scientific and technology programs. And these facts are essential to how members of the public use information in their daily lives. The library and education communities rely on access to information in all aspects of teaching and research including the preservation of our cultural and scientific heritage. Such access is integral to the success of the U.S. educational and research effort and the United State's leadership in the global economy.

Mr. Chairman, to keep this balance, all sectors - public and private - must rethink and reconfigure services, operations, and business models to meet the challenges of the networked environment. Last year, this Subcommittee recognized that new or modified copyright and intellectual property regimes would be a key component in how these different sectors adapt to the digital environment. The new models for education, libraries, the scholarly and research communities, and businesses should foster productive and mutually beneficial relationships between public and private, commercial, and non-profit sectors. Thus it is critically important that all proposals be considered in light of the need for balance and fairness to all communities.

The library community understands that unauthorized digital copying can lead to piracy. We have invested significant amounts in education campaigns concerning appropriate use within our institutions and purchased technology to ensure that adequate safeguards are in place. This is, of course, in addition to the acquisition of hundreds of thousands of products and services.

Libraries spend well over \$2 billion every year on purchasing and/or licensing information. According to studies published in 1998 by the National Center for Education Statistics (U.S. Department of Education), the 8,981 U.S. public systems spent \$789 million on library materials, including electronic formats, in 1995. The 3,303 U.S. academic libraries spent \$1.3 billion on information services in all formats. For example, the acquisitions budget for this year at Johns Hopkins University is approximately \$8 million with approximately \$950,000 devoted to online resources, and this number is growing. These figures do not include hardware, software, network support and equipment, or personnel. And importantly, these figures do not include the financial, technological, and personnel resources devoted by libraries to preserve information resources so that they are accessible to the public over time.

**My testimony focuses on three key aspects of H.R. 1858 which support the continuation of the library community's important activities.**

- the need to preserve the fair use of information and keep factual information in the public domain
- promote the progress of science, education, and research
- provide safeguards against monopolistic pricing.

**The need to preserve the fair use of information and to keep factual information in the public domain.**

For over 200 years, the information policy of this country has protected creativity - not factual information. This policy has served us extremely well and allowed libraries and educational institutions and the constituencies they serve to flourish. This policy has also allowed creators and publishers to flourish. Access to data and information are the building blocks of knowledge and essential to advancement of knowledge in countless fields. Our democracy is based on the premise that access to information, government information in particular, not only leads to a more informed citizenry but strengthens our Nation. Provisions in H.R. 1858 will continue this tradition by permitting the unfettered use of facts - information which is in the public domain - while affording limited new protections to database producers necessitated by digital technology. The focus of H.R. 1858 is on direct competition, not mere use of facts, with the goal of preventing displacement of databases by unfair, anti-competitive practices.

The relatively recent explosion of digital technologies and their quick adoption into all facets of our lives has resulted in an unprecedented and growing number of databases. When coupled with the rapid deployment of computer and related technologies, individuals may obtain and use dozens of databases or sources of information, combine this data with other information, and create new information -- information about personal investments, about community activities, about our environment, and more. This activity not only sparks creativity in the academic and research sectors but also presents enormous new opportunities to one of the fastest growing sectors of our economy, small business. H.R. 1858 permits these types of activities and supports the growth of all sectors of the economy, not in any way handicapping one sector at another's expense.

### **Promote the progress of science, education, and research.**

The success of our Nation's education and research systems is dependent upon the ability of educators and researchers to access data and information for multiple purposes. Scientific and research progress depends upon the ability to use public domain information, combine public and proprietary data to create new databases, and reuse existing data. Researchers typically create new knowledge by building upon the work of others. This practice, often described as, "standing upon the shoulders of giants" is the basis for our Nation's global leadership. Provisions in H.R. 1858 permit this practice - so fundamental to our educational system - to continue.

Use, reuse, recompilation of data and information also lead to new products and services in the public and private sectors. Entrepreneurs use the information resources in libraries, oftentimes government information, to develop new services of value in our information economy. Overly broad protections in this arena would inhibit research and innovation by putting new economic and use barriers in front of researchers in a quickly moving global economy. Provisions in H.R. 1858 appropriately encourage scientific, educational, or research endeavors while at the same time, providing protection to the producers of databases from commercial free-riding of their products and services. As this debate continues, it is crucially important to understand how our communities use information and engage in research activities because these activities are not exercises in any capacity of commercial free-riding but, instead, are legitimate and legal practices.

### **Provide safeguards against monopolistic pricing.**

An increasing number of databases, including those developed with federal funding, are only available from a single producer. These "sole source" databases may contain historical data that cannot be recreated or the economics of recreating some datasets may not be feasible, such as generation of duplicate datasets from a myriad of satellite sensors or real-time financial information. Accessing these resources can prove problematic for members of the research and education communities. With only one point of access to a sole source database, the library has little recourse in accessing that resource. The publisher or producer of the database is not obligated to permit transformative uses, nor is there any leverage in negotiating the license to moderate costs or permit downstream activities. Provisions in H.R. 1858 provide reasonable terms and conditions for the user community and at the same time, give the producer economic benefits.

The library community is keenly aware of the problems associated with lack of competition in the journal arena where we are seeing skyrocketing costs. Some context may be helpful. Between 1986 and 1996, the consumer price index increased 44 percent. Over that same decade, the cost of monographs increased 62 percent. The price of health care increased 84 percent. And the cost of scholarly journals increased 148 percent - more than three times the rate of inflation and nearly twice the rate of growth in health care costs. And the price of subscriptions to online databases grew even more rapidly. The cost of information, especially scientific research, is climbing at a rate far beyond the means of buyers to pay. For example, serials spending in ARL libraries is 152% higher in 1998 than the decade before.

In an effort to resolve this expensive and unproductive predicament, the library community has initiated projects to inject competition and cost-based pricing into the marketplace. To be successful though, these

efforts should not be thwarted by protectionist changes to copyright and intellectual property regimes. Instead, there should be, as demonstrated in provisions of H.R. 1858, a focus on stimulating innovation and competition. These provisions provide the owner of the database the assurance that there will be reasonable compensation for use of the database while ensuring that there are appropriate terms and conditions on database access for users.

A key indicator of our new global economy is the growing number of mergers and acquisitions. We have witnessed a significant amount of consolidation in the publishing arena within the last several years which will have a profound impact on our institutions and how our users access selected information resources in the future. This raises some cause for concern. For example, one proposed merger considered by Reed Elsevier and Wolters Kluwer foundered due to opposition from antitrust authorities in Europe and the United States. Although no formal complaints were filed by U.S. or European agencies, regulators did indicate their serious concerns with the proposal. Of interest to these deliberations are some of the discussions of the United States Department of Justice, Antitrust Division, which considered the implications of the proposed merger on U.S. interests and surfaced a significant amount of new data. One finding by Mark McCabe, formerly with the Antitrust Division, now Assistant Professor of Economic, Georgia Institute of Technology, is that, "journals sold by commercial publishers indicate that prices are indeed positively related to firm portfolio size, and that mergers result in significant price increases." As there is a steady contraction in the number of publishers which leads to diminished competition, we should be extremely careful in enacting new proposals which in any way could increase control over information resources. H.R. 1858 appropriately recognizes this concern by balancing the interests of users of databases with the needs of the publisher.

Finally, the U.S. Government is the largest producer of information. Recently, a number of factors have led to federal agencies outsourcing data activities to the private sector where, for example, private sector partners create and possibly maintain a federally-funded database for an agency. The number of public-private sector partnerships is growing and the private sector is becoming more involved in disseminating government data for agencies. Without appropriate safeguards, this government information could be subject to new protections and not available within the public domain as now required by law. H.R. 1858 seeks to ensure that agencies do not permit this information to be captured by private sector entities, leading to a reduction in access and the robustness of the public domain. It may be useful to explore additional means to ensure that publicly funded information is accessible without more restrictions on use and reuse.

In closing Mr. Chairman, we fully support the narrow, targeted approach taken in H.R. 1858 to ensure that there are no negative or unintended consequences for the public and private sectors, including libraries, that properly rely on access to data and government works. There should be a careful balancing of interests to ensure that users and providers of information are able to continue with current practices while producers of databases receive new limited protections. Such balancing entails a focus on anti-competitive practices in the use of databases, not protection of facts or information. We thank you and the other Members of this Subcommittee for your leadership on these issues and look forward to working with you on this legislation.

### **Organization Biographies:**

**The American Library Association** is a nonprofit educational organization of 57,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society.

**The American Association of Law Libraries** is a nonprofit educational organization with over 5,000 members dedicated to serving the legal information needs of legislators and other public officials, law professors, and students, attorneys, and members of the general public.

**The Association of Research Libraries** is an Association of 122 research libraries in North America. ARL programs and services promote equitable access to and effective use of recorded knowledge in

support of teaching, research, scholarship, and community service.

**The Medical Library Association** is an organization of over 3,800 individuals and 1,200 institutions in the health sciences information field. MLA members serve society by developing new information delivery systems, fostering educational and research programs for health sciences information professionals, and encouraging an enhanced public awareness of health care issues.

**The Special Libraries Association** is an international association representing the interests of nearly 15,000 information professionals in 60 countries. Special librarians are information resource experts who collect, analyze, evaluate, package and disseminate information to facilitate accurate decision-making in corporate, academic, and governmental settings. The Association offers a myriad of programs and services designed to help its members serve their customers more effectively and succeed in an increasingly challenging environment of information management and technology. SLA is committed to the professional growth and success of its membership.

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Washington, DC

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