

NII Copyright Bill Stalled; WIPO Takes Up 'Digital Agenda'

Although the House Subcommittee on Courts and Intellectual Property has "postponed indefinitely," mark up on H.R. 2441, the NII Copyright Protection Act of 1996, negotiations on key issues continue.

Many of the stakeholders consider it very unlikely that the House or the Senate will consider this legislation prior to the end of the session. A brief but thorough analysis of the contentious issues causing this deadlock can be found in the June 22, 1996 issue of the *Congressional Quarterly*, "Cyberspace Bill Appears Dead," (page 1752). The two main issues of contention are circumvention of copyright protection systems and online service provider (OSP) liability issues.

ARL, the [Digital Future Coalition \(DFC\)](#), and others are actively monitoring the activities of the [World Intellectual Property Organization \(WIPO\)](#) because the language included in the NII Copyright bills ([H.R. 2441 and S. 1284](#)) and in the [Database Investment and Intellectual Property Antipiracy Act of 1996](#) (H.R. 3531) could be included in a treaty that the U.S. Senate would consider in 1997. If this occurs, there will not be a full and complete domestic consideration of these critical copyright and intellectual property issues.

At the end of May, the U.S. delegation to the World Intellectual Property Organization (WIPO), led by Bruce Lehman, Commissioner of Patents and Trademarks, took the provisions included in these bills to a WIPO session in Geneva. (Committee of Experts on a Possible Protocol to the Berne Convention, May 22-24, 1996.) It is anticipated that the Chairman of the Experts Committee, Jukka Liedes of Finland, will submit draft treaty language to WIPO at the beginning of August 1996.

WIPO treaty negotiations on this language are scheduled to occur in Geneva in December 1996. When asked by a Bureau of National Affairs reporter what the Administration would do if the NII bills fail, Lehman commented, "The thing we are going to do is go to Geneva in December. I think that our proposed statutory changes are very modest. The beauty of our NII legislation, the [White Paper](#), is that it provides us with a template for that international system. We are going to see if we can't negotiate some new international treaties and get that straightened out. Now it may be that those treaties will require some legislative implementation. They will certainly have to be ratified by the Senate in any event, but they also might have to be implemented and that gives us a sort of second bite of the apple." (Lead Report, BNA, *Electronic Information Policy and Law Report*, 6/21/96.)

In response to the U.S. delegation's position, the DFC wrote to Vice President Gore and requested that the U.S. delegation to WIPO, "immediately modify the portfolio of the Administration's delegation to WIPO's December 1996 Diplomatic Conference." In addition, the DFC asked that U.S. delegation members:

- "formally propose that, at the December 1996 Diplomatic Conference, WIPO adopt a timetable for future discussion and action on the 'Digital Agenda' that will permit its careful consideration by the 104th and 105th Congresses, and that will permit the United States delegation to take Congressional action into account in subsequent treaty negotiations; and
- "affirmatively work to assure in all appropriate WIPO (and related) bodies that no proposals

related to the Digital Agenda, whatever their source, are acted upon prior to Congress' full evaluation of these important issues and action on responsive legislation."

In addition to working with others in the library community and the Digital Future Coalition, ARL is working with a coalition of the commercial sector stakeholders to influence the international discussions. This coalition has also sent a letter to the President and Vice President expressing similar concerns.

Current information on the status of these pending bills including the international ramifications can be found on the [DFC Home Page](#).

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