

Congress Ready for Copyright Debate

Copyright Bill Introduced by Reps. Boucher and Campbell

On November 13, Cong. Boucher (D-VA) and Cong. Campbell (R-CA) introduced H.R. 3048, the "Digital Era Copyright Enhancement Act." It is a very balanced bill containing many positive provisions related to fair use, first sale, preservation, distance education, ephemeral copying, and federal preemption issues (i.e., state licensing laws would not preempt or narrow exemptions and limitations in the federal Copyright Act). Unlike the Administration's proposal (H.R. 2281), this bill includes provisions relating to circumvention of technological measures and copyright management information that match the W.I.P.O. treaty language. Provisions in H.R. 2281 go well beyond what is required to implement W.I.P.O. treaty language.

H.R. 3048 sets the appropriate scope of the congressional debate concerning how best to update the Copyright Act to meet the challenges of the digital environment in a balanced manner. The introduction of this and other copyright legislation in the House and Senate sets the stage for meaningful debate on the full range of copyright issues. A complete analysis of the bill is available on the DFC website <http://www.dfc.org/docs/sbsbou.htm>.

House Conducts Hearing on Legislation to Protect Compilations of Information

On October 23, the House Subcommittee on Courts and Intellectual Property held a hearing on H.R. 2652, the Collections of Information Antipiracy Act. The bill, introduced by Chairman Coble (R-NC) seeks to provide additional protections to compilations of information, both print and electronic. The bill seeks to address the concerns of certain parts of the information industry, particularly publishers of large legal databases who may be affected by the 1991 Supreme Court decision, *Feist v. Rural Telephone*. This decision held that comprehensive collections of facts arranged in conventional formats were not protected under copyright, and could not constitutionally be protected under copyright. The decision rejected the notion that a compiler's "sweat of the brow" could ever substitute for the "original authorship" that the statute and the constitutional Copyright Clause require as the condition of copyright-ability.

In addition, some members of the information industry are concerned with a 1996 European Union directive on the legal protection of databases. This directive calls for each member nation to implement a database law by the end of 1997. The directive includes the notion that databases created in non-EC countries will not be granted legal protection, thus, a fear of lack of reciprocity is also prompting segments of the industry to advocate new protections.

Unlike the database bill introduced last year to address these issues (H.R. 3531) and the draft World Intellectual Property Organization (W.I.P.O.) treaty on protection of databases, H.R. 2652 proposes additional protections of collections from a misappropriation approach vs. a *sui generis*. In other words, it in theory does not create a property right in the database; it simply prohibits the taking of data one has collected. Despite this new approach, an initial reading of the bill surfaces many concerns. For example, the language of the bill is extremely broad and includes few, if any truly meaningful exemptions for scientific research, education, and

libraries. It appears that H.R. 2652 would apply to all compiled information, both current and archival. It would also apply retroactively. And, since there is no term limit on protection, this would have serious ramifications for information moving into the public domain and for information staying in the public domain. A series of witnesses outlined their positions on the legislation, including James G. Neal, Director, Milton S. Eisenhower Library, Johns Hopkins University, and President of ARL, who testified on behalf of the shared legal capability representing ARL, ALA, SLA, AALL, and MLA. He noted five key concerns with the legislation.

- There continues to be no compelling research detailing the need for new protections.
- The legislation encompasses a vast array of information, in part because provisions in the legislation go well beyond the traditional misappropriation doctrine.
- There are no definitions of key terms which are needed to understand the full scope of the legislation.
- The exceptions and exclusions included in the legislation require additional definition to be meaningful.
- The provision relating to government information requires modification to ensure a continued, robust public domain and to ensure that governmental works are not copyrighted.

Supporting additional protections for collections of information were Laura D'Andrea Tyson, consultant to Reed-Elsevier, Inc. and The Thomson Corporation; Paul Warren, Warren Publishing, on behalf of the Coalition Against Database Piracy; and Robert Ledley, Georgetown University Medical Center. Expressing concerns with the proposal were Professor Reichman, Vanderbilt University, and William Wulf, President of the National Academy of Engineering. In addition, C. Judson King, Provost and Senior Vice President, Academic Affairs, University of California, wrote a letter to members of the California delegation who serve on the Judiciary Committee detailing numerous problems with the legislation and calling upon those members to oppose H.R. 2652.

Rep. Coble announced a second hearing on H.R. 2652 for February 1998. The library statement and additional resources are available at: <http://www.arl.org/info/frn/copy/copytoc.html>.

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