

Library OSP Letter to the House and the Senate

**Note--the identical letter was sent to Representative Hyde*

March 30, 1998

Hon. Orrin G. Hatch, Chair
United States Senate
Judiciary Committee
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Sen. Hatch:

On behalf of the 12 undersigned major organizations representing the nation's libraries, archives and educational institutions we write today to express our appreciation for the time that you and your staff have devoted to date to assuring that any statute designed to clarify the limit of an on-line service provider's liability for copyright infringement appropriately accommodates the unique nature of our institutions and practices.

Like the nation's communications carriers and commercial internet providers, we believe strongly that resolution of this issue is critical to the future of public access to information and the ability of our institutions to operate in the networked environment. How these issues are resolved is also critical to the future of education at every academic level. We further believe that it would be inappropriate and counterproductive for the Senate to act upon the pending World Intellectual Property Organization copyright treaties before the scope of our institution's liability for the organization, carriage and cross-linking of on-line information is statutorily clarified.

We are committed to continuing to assist your staff in this important effort, Mr. Chairman. We are also concerned that any agreement negotiated solely between representatives of the commercial "content" and "online" communities may not reflect or adequately address the unique needs and limitations of our institutions, patrons and users.

Specifically, under any final agreement crafted, it is crucial that:

- no library, archive or educational institution lose any "mere conduit" exemption provided because a person employs an electronic network to refer a user to information location data that might otherwise be transmitted automatically by a search engine or by means of a hypertext link;
- an educational institution, library or archive not lose its "mere conduit" exemption under the proposed liability statute solely on the basis of actions taken without our institutions' knowledge by individuals who are employees, faculty, students or patrons;
- no exemption or limitation on liability otherwise provided by the proposed statute be lost or diluted solely on the basis of activities that our institutions believe to be lawful because authorized by the copyright owner (e.g., pursuant to license), or privileges or defenses to liability set forth in the Copyright Act (such as the preservation of deteriorating material);
- the receipt of tuition, or service/user fees, by our institutions not be considered to be a "payment" which would otherwise limit the scope or availability of any exemption or other limitation on liability provided by the proposed statute;
- an institution not lose the benefit of any exemption or liability limitation available to commercial online service providers *solely* because that institution elects not to take down information on the basis of established privacy law, or to afford sufficient time to follow established institutional due process concerning copyright infringement allegations. (We believe this concept important to

reflect in statute, even if it is otherwise technically and economically feasible for an institution to "take down" allegedly infringing material.)

Finally, we respectfully request that any statute of this nature ultimately adopted: (a) expressly disclaim any effect upon the availability or scope of any other statutory limitation on or exception to the rights of information proprietors; (b) remain silent in the service provider liability context regarding the protection or circumvention of effective technological measures (or any other matter pertaining to implementation of Article 11 of the WIPO Copyright Treaty); and (c) be clearly understood to establish a *floor*, rather than a *ceiling* of potentially acceptable conduct by any on-line service provider, whether operating in the public or private sectors.

Thank you again for your commitment to rational and comprehensive WIPO treaty implementation legislation and policy, Mr. Chairman. We look forward to participating actively in resolution of the on-line service provider liability debate and to continuing to work closely and cooperatively with your staff to that end.

Respectfully submitted,

Carol C. Henderson, Executive Director
American Library Association, Washington Office for

American Association of Law Libraries
American Library Association
Association of American Universities
Association of Research Libraries
Consortium for School Networking
International Society for Technology in Education
Medical Library Association
National Association of Independent Schools
National Education Association
National School Boards Association
Society of American Archivists
Special Libraries Association

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