

Hearings on NII Copyright Protection Act Begin

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The House Subcommittee on Courts and Intellectual Property conducted hearings on [H.R. 2441](#), the NII Copyright Protection Act of 1995, on [February 7](#) and [8](#). Six panels explored selected provisions included in the bill that amends the [Copyright Act](#) as proposed in the Commerce Department IITF [White Paper Intellectual Property in the NII](#). There were a wide range of views expressed by both witnesses and Members attending the hearing.

The witnesses were from the commercial sector with two notable exceptions, Cornelius Pings, President of the Association of American Universities and Jeanne Hurley Simon, Chair, National Commission on Libraries and Information Science.

Chairman Moorhead (R-CA) acknowledged that the Subcommittee is at the beginning of a long process and expressed the hope that they will move quickly so that the House will pass [House](#) and [Senate](#) before consensus is reached.

Rep. Moorhead stated in his opening statement that, "we are at the beginning of a new frontier in the distribution and reproduction of copyrighted works" and that "intellectual property has an impact greater than any other on the economy." Co-sponsor Patricia Schroeder (D-CO), echoed Rep. Moorhead's interest in clarifying the current statute and supported the conclusion in the [White Paper](#) that there should be third party liability for copyright infringement. [Rep. Boucher](#) (D-VA) called for a "careful balance," that meets the needs of users and providers so that they are "appropriately treated." The balance, he noted, should include protections for providers, address the needs of users, and allow for new services. In addition, he expressed reservations about the way provisions in the bill affected "fair use" and its failure to address the first sale issue or the online service provider liability issue. He also called for revision and amendment to the provisions relating to copyright management information.

Throughout the two days of testimony, Rep. Boucher repeatedly called for a resolution to these issues prior to the bill moving forward, focusing in particular on the online liability issues and the impact of provisions in the bill on distance education. [Rep. Goodlatte](#) (R-VA) shared many of Rep. Boucher's concerns and stated that the provisions regarding encryption and copyright management information are "too far-reaching."

[Rep. Lofgren](#) (D-CA) was extremely concerned regarding the impact of the bill on education and stated that libraries and schools were "meticulous" about respecting copyright, and that he could not appreciate how "as a practical matter" the bill would work or be effective. Another perspective was offered by Rep. Bono (R-CA) who characterized the Internet as a "tremendous problem" and as "anarchistic." He suggested no one "wants responsibility," in this new environment but also acknowledged that the "transformation of education is a beautiful thing."

Like Committee members, the witnesses expressed widely opposing views on the bill. Edward Black, President of the Computer and Communications Industry Association, was highly critical of the legislation and stated, "any final legislative proposal regarding changes in intellectual property must be designed with public expectations in mind, not despite them. Any new legal construct created or modified to protect the rights of copyright owners must vigilantly take into account the paramount and

underlying purpose of the intellectual property laws: to promote the sciences and useful arts." Speaking on the same panel, Jack Valenti, President, [Motion Picture Association of America](#), offered a contrary opinion focused on how to provide greater protections to intellectual property owners, on the "need to resist the clamor for an exemption for online providers," and commented that without additional protections owners would be left in "cyberspace cold, stripped of our protective armor." Many other panelists endorsed Mr. Valenti's support for the bill.

On a separate panel, David Ostfield, representing the Institute for Electrical and Electronics Engineers and Cornelius Pings, were equally critical of the bill.

Speaking on behalf of higher education, Dr. Pings stated that "the recommendations of the White Paper, if implemented, would impose the first economic model--a commercial model--onto virtually all intellectual property in the networked environment, posing a serious threat to the continued functioning of scholarly communication in that environment."

Dr. Pings also endorsed the ARL Intellectual Property Statement of Principles as well as a statement submitted for the hearing record by five library associations, including ARL (see below).

In her statement, Jeanne Simon, NCLIS, urged the Subcommittee to "allow time to carefully research and understand the consequences of proposed changes on the general public...[and that] Congress should make a special effort to hear viewpoints from all interested parties concerning the proposed changes."

The Senate Committee on the Judiciary has indicated that there will be hearings on the companion bill, S. 1284, but the Committee has not set a date.

Excerpts From the Library Community Statement on H.R. 2441, The NII Copyright Protection Act of 1995

- The proposed legislation will greatly strengthen the rights of copyright proprietors in the electronic environment, providing them with near total control over the reproduction, distribution, and use of their works. This level of control is far beyond what they enjoy today and will substantially raise the cost and reduce the flow of information that has fueled growth in research, education, and creativity in American society.
- In developing a digital update to the Copyright Act, the existing balance should be maintained by coupling provisions that benefit copyright owners with similar provisions for the benefit of information users. From the Library perspective, the need for this balance is particularly acute in the Fair Use (Section 107) and Library provisions of the Act (Section 108).
- Congress should resolve the issue of online service provider liability by amending the law to provide that such providers are not liable for the acts of their users, where they have no actual knowledge of an alleged infringement.

Also included in the statement is library community recommended language to amend Section 107 "to ensure that robust fair use in the electronic environment in an integral part" of the reformed Act; and to amend Section 108 "to recognize the role of libraries and archives in the digital era," particularly for the purpose of preservation of research material. The February 8th statement was filed with Congress on behalf of five library associations (Association of Research Libraries, American Association of Law Libraries, American Library Association, Medical Library Association, and Special Libraries Association) and is available in full on the [ARL FTP Server](#)

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[Table of Contents for Issue 185](#) | [Other Copyright Articles](#) | [Other Federal Relations Articles](#) | [ARL Newsletter Home](#)



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