



# Intellectual Property: An Assessment of International Implications

Prepared by [Mary E. Jackson](#)  
Association of Research Libraries  
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While copyright legislation for the [National Information Infrastructure \(NII\)](#) remains stalled in both the House and Senate, the proposals contained in this and other intellectual property legislation are under active consideration in the international arena. 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 \(H.R.3531\)](#) will likely be considered by the [World Intellectual Property Organization \(WIPO\)](#) in a diplomatic conference to amend the Berne Convention planned for December 1996.

The U.S. delegation to WIPO has taken forward the language included in the domestic bills despite continuing and significant disagreement over many of these provisions in the U.S. The European Commission (EC) has submitted a series of proposals that support several of the recommendations included in the Administration's [White Paper](#). There is a growing concern that there could be international adoption of some of either or both of the U.S. and EC proposals without full and complete domestic consideration of these critical copyright and intellectual property issues. Jukka Liedes (Finland), Chair of the WIPO Experts Committee, is expected to submit draft treaty language to WIPO in August.

Representative Boucher (D-VA) and members of the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary wrote a letter to Chairman Liedes urging separation of the "Digital Agenda" from other issues under consideration by WIPO. The [Digital Future Coalition](#) sent a letter to Vice President Gore formally requesting, among others, that a timetable for WIPO discussions be proposed that would permit the U.S. delegation to take Congressional action into account in subsequent treaty negotiations.

If the Diplomatic Conference passes the U.S. and EC proposals in December and they are subsequently ratified by the U.S. Senate, the balance in the current copyright law would be tilted in favor of copyright proprietors. Libraries and users of copyrighted works may lose some rights they currently enjoy, such as the ability for one ILL department to fax an article to another library or a user to browse a copyrighted work online.

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**Summary of Key Terms and Concepts**

## **World Intellectual Property Organization (WIPO)**

- Arm of the United Nations that promotes protection of intellectual property
- Ensures administrative cooperation among various treaties

## **Berne Convention for the Protection of Literary and Artistic Works and Protocol Process**

- Multi-national treaty providing for mutual protection of copyrights (that is, what is protected under U.S. copyright is protected under the copyright laws of other member countries)
- Last major revision in Paris, 1971
- Article 9: Right of Reproduction

## **Overview of Berne Convention and Protocol Process**

- Protocol is a treaty (amendment or revision) within Article 20 of the Berne Convention
- Member State may elect not to sign the Protocol, but still would be a signatory to the Berne Convention
- Strategy of "Additional Protocol"
- advances the "Digital Agenda" without requiring a revision of the entire Berne Convention

## **EC Proposal**

- Definition of 'reproduction' and 'copy' within meaning of Article 9 (1)
- Defined as permanent or temporary storage
- RAM storage would be an act of reproduction
- Communication to the public
- Expands Article 11 to include wire (currently just wireless)
- Uncertain whether display is covered
- Fax transmission might become illegal
- Technological protection devices/anti-circumvention
- Proposal would make it unlawful to make or distribute devices intended to circumvent copy-protection systems
- Not a new right, just a "new type of enforcement measure"
- Raises issues similar to the online service provider liability debates

## **U.S. Proposal for sui generis database protection**

- Same intent as HR 3551
- Sui generis is non-copyright but copyright-style (a "parallel" protection)
- Protection of non-original databases against unfair and unauthorized extractions
- Protection for qualitatively or quantitatively substantial investment of human, technical, financial or other resources
- Protection for 25 years; each change (such as a deletion, alteration, etc.) results in 25 year protection; net result is perpetual protection
- Also includes provision against anti-circumvention devices
- Bruce Lehman: "a meaningful global solution"

## **Timeline**

- May, 1996
  - Committee of Experts on the Berne Protocol and New Instrument
  - meeting held in Geneva, Switzerland
  - European Commission and U.S. proposals introduced
- August - September, 1996
  - Chairman of WIPO Expert Committee, Jukka Liedes of Finland, drafting language for

- "basic proposals"
- 8/1 draft language sent to Member Countries
  - 9/1 draft language sent to Non-governmental organizations (NGO)
  - September - December, 1996
  - WIPO member governments holding consultation meetings
  - December 2-20, 1996
  - WIPO Diplomatic Conference in Geneva
- 1997
    - if Protocol approved at Conference, Protocol ratified by U.S. Senate and other member countries

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