

## Joint Letter to Mr. Daniel Tarullo

---

November 19, 1996

Mr. Daniel Tarullo  
Deputy Special Assistant to the President for Economic Policy  
National Economic Council  
The White House  
Washington, D.C. 20500

Dear Mr. Tarullo:

We are writing on behalf of the nation's leading library associations to express several concerns regarding the proposed draft treaties under consideration by the [World Intellectual Property Organization \(W.I.P.O.\)](#) for the upcoming meeting in December 1996. We believe that in a number of arenas, it is premature for the U.S. delegation to engage in treaty negotiations. Thus we urge that these treaty negotiations be deferred until there is domestic consensus on all of the issues which the treaties address.

If deferral is not possible, we seek your help in ensuring that the U.S. delegation to W.I.P.O. advocate the continued viability of fair use and related education and library provisions in both the print and digital environments through inclusion of language in the record of the Diplomatic Conference and through an important language change in the draft treaties. In addition, it will be important that libraries and educational institutions not be held liable under certain circumstances for violations of the new communication and reproduction rights merely for affording access to digital networks.

Our concerns relate to the ability of the Congress and the courts to ensure that the principles of American copyright laws which today provide a balance between potentially competing interests can be appropriately extended to the digital environment under terms of the draft treaties. There is a great deal of uncertainty regarding how the provisions on "limitations and exceptions" included in Article 12 of the "New Copyright Treaty" (which derive from Article 9 (2) of the Berne Convention) will be applied to doctrines such as fair use and related library and educational exemptions.

The "three-step test" included in this provision could pose significant challenges to future legislative or judicial activities seeking to update copyright to the digital environment. Fair use and related exemptions are the essential means by which teachers teach, students learn, and researchers advance knowledge. Any erosion of those privileges in the print and digital environments would significantly impair the ability of libraries to effectively serve multiple constituencies. Indeed, we as a Nation will not realize the benefits of the National Information Infrastructure if libraries, key players in that infrastructure, do not have the benefit of operating within a system that balances the needs of users and owners of copyrighted works.

Two actions are required that will ensure that fair use and related education and library exemptions are appropriately extended to the digital environment. First, the word "only" should be deleted from the proposed text of Article 12 of the "New Copyright Treaty," and from the equivalent provisions in other treaty texts. Second, the record of the Diplomatic Conference must include language that permits the United States to extend its traditional approach to fair use and related education and library exemptions into the digital environment.

Finally, earlier this year, representatives of the library community participated in negotiations concerning third party liability that were sponsored by Rep. Goodlatte (R-VA). Although there was significant progress in those discussions, no compromise was reached. We understand that there have been

continued discussions recently with some representatives of the commercial service provider community. If any agreements are reached on Article 7 and Article 10 of the "New Copyright Treaty," it will be critically important that the exceptions afforded to the commercial sector are equally applicable to libraries and educational institutions. Those institutions that provide information in the digital environment should not be held strictly liable for the infringing acts of their users.

We would be happy to discuss these concerns with you and your staff. Please let us know if there is additional information that we can provide.

Sincerely,

Prudence S. Adler  
Assistant Executive Director  
[Association of Research Libraries](#)

Carol C. Henderson  
Executive Director, [Washington Office](#)  
[American Library Association](#)

Robert Oakley  
Washington Affairs Representative  
[American Association of Law Libraries](#)

Carla Funk  
Executive Director  
[Medical Library Association](#)

David Bender  
Executive Director  
[Special Libraries Association](#)

---

[Return to Copyright and IP Table of Contents](#)

---

 [ARL Home](#)

---

© Association of Research Libraries, Washington, DC

Web Design by [Ann Doty](#)  
Maintained by [ARL Web Administrator](#)  
**Last Modified:** June 8, 2002