

NII COPYRIGHT PROTECTION ACT OF 1995

JOINT HEARING BEFORE THE SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY OF THE HOUSE COMMITTEE ON THE JUDICIARY AND THE SENATE COMMITTEE ON THE JUDICIARY

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 2441 and S. 1284

NII COPYRIGHT PROTECTION ACT OF 1995

NOVEMBER 15, 1995

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NII COPYRIGHT PROTECTION ACT OF 1995

WEDNESDAY, NOVEMBER 15, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY, COMMITTEE ON THE JUDICIARY, JOINTLY WITH THE SENATE COMMITTEE ON THE JUDICIARY,

Washington, DC.

The committees met, pursuant to notice, at 10:04 a.m., in room 2237, Rayburn House Office Building, Carlos Moorhead (chairman of the House Subcommittee on Courts and Intellectual Property, Committee on the Judiciary) presiding, and Hon. Orrin Hatch (chairman of the Senate Committee on the Judiciary) presiding.

Present from the House Subcommittee on Courts and Intellectual Property, Committee on the Judiciary: Representatives Carlos J. Moorhead, F. James Sensenbrenner, Jr., Howard Coble, Bob Goodlatte, Sonny Bono, George W. Gekas, Patricia Schroeder, John Conyers, Jr., Howard L. Berman, Xavier Becerra, and Rick Boucher.

Present from the Senate Committee on the Judiciary: Senators Orrin G. Hatch and Patrick J. Leahy.

Also present from the House Subcommittee on Courts and Intellectual Property, Committee on the Judiciary: Thomas E. Mooney, chief counsel; Mitch Glazier, assistant counsel; Jon Dudas, assistant counsel; Sheila Wood, secretary; Perry Apfelbaum, minority general counsel; Betty Wheeler, minority counsel; and Stephanie Peters, minority counsel.

Also present from the Senate Committee on the Judiciary: Edward Damich, counsel.

OPENING STATEMENT OF CHAIRMAN MOORHEAD

Mr. MOORHEAD [presiding]. The joint meeting will come to order. It gives me great pleasure to welcome to the House Judiciary Committee our distinguished colleagues from the other body. The chairman of the Senate Judiciary Committee and I have been trying to get together all year, but our schedules just haven't allowed us to do that so far, but we're doing it now and we have an opportunity in the near future to go over many things together of interest to the House and the Senate.

We have passed two very important bills out so far this year: the Biotech Process Patent Act and the Performance Right in Sounding Recordings Act, which the Senate passed and the House passed soon thereafter.

Chairman Hatch and Senator Leahy introduced S. 1284, an identical bill to the bill, H.R. 2441, that Pat Schroeder, Howard Coble, and I introduced.

On behalf of the subcommittee, I would like to welcome you and your staff to our humble surroundings here. I'd like to turn over the gavel at this time to the Chair so that we can get underway. Senator Hatch.

OPENING STATEMENT OF CHAIRMAN HATCH

Mr. HATCH [presiding]. Well, thank you, Congressman Moorhead. I'm really honored to be here with you and my colleagues in the House. It's always good for us to come over here where we can be educated even more, but I'm delighted to cochair this first hearing on the National Information Infrastructure Copyright Protection Act of 1995.

On behalf of the Senate committee, I, too, welcome our distinguished witnesses, as well as all who have come to observe this proceeding. In addition, I want to thank my friend Carlos Moorhead and the House subcommittee for their hospitality in hosting this joint hearing.

Today we're embarking upon a historic undertaking which establishes the "rules of the road" for the information superhighway. Probably most people today experience the information highway by means of their computers: when they use electronic mail to subscribe to a bulletin board service, or use other online services. But, these existing services are only dirt roads compared to the superhighway of information sharing which lies ahead.

The information superhighway, or NII, of the future will link not only computers, but also telephones, televisions, radios, fax machines, and more, into an advanced high-speed interactive, broadband, digital communication system. Over this information superhighway, data, text, voice, sound, and images will travel and their digital format will permit them not only to be viewed or heard, but also to be copied and manipulated. The digital format will also ensure the copies will be perfect reproductions, without the degradation that normally occurs today when audio- and videotapes are copied.

The NII has tremendous potential to improve and enhance our lives by providing quick, economical, and high-quality access to information that educates and entertains, as well as informs. When linked up to a global information infrastructure, the NII will broaden our cultural experiences and allow American products to be more widely disseminated.

Highways, of course, are meant to be used and, in order to be used, they must be safe. That's why we have rules of the road on our asphalt highways, and that's why we need rules for our digital superhighway. No manufacturer would ship his or her goods on a highway if the trucks were routinely hijacked and his or her goods plundered. Likewise, no producer of intellectual property will place his or her works on the information superhighway if they are routinely pirated. We might end up having enormous access to very little information, unless we can protect property rights in intellectual works.

The piracy problem is particularly acute in the digital age where perfect copies can be made quickly and cheaply, and where they can be disseminated to thousands of people almost instantaneously. Protecting the property rights of the owners of intellectual property not only induces them to make their products available, it also encourages the creation of new products. Our copyright laws are based on the conviction that creativity increases when authors can reap the benefits of their creative activity.

But the NII also promises to increase creativity in a more dramatic way by providing individual creators with public distribution of their works outside traditional channels. For example, it will provide authors who have been unsuccessful in finding a publisher with the ability to distribute their works themselves to great numbers of people at a very low cost. In protecting the property rights of creators and owners, these bills apply in the digital environment the fundamental principle of our copyright law that creativity is promoted by securing rights in intellectual property. At the same time, we are mindful of traditional restrictions on these rights.

With this hearing, we are just beginning the process of fine-tuning this legislation. Later we will hear from numerous private parties who use or will use the information superhighway, including those who are fearful of toll roads and speed traps. In suppressing piracy and other kinds of banditry, we do not forget that what we are policing is, after all, a "public" highway.

I would now like to recognize the Cochair of this hearing, Congressman Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

As has been pointed out, the bills before us today are the product of recommendations made by the Working Group on Intellectual Property Rights of the administration's Information Infrastructure Task Force. The Working Group held a hearing in November 1993. They then drafted a so-called "Green Paper" and circulated it widely for comment, and subsequently held 4 additional days of hearings in Chicago, Washington, DC, and Los Angeles. A final report was issued in September 1995, completing 2½ years of study and analysis of each of the major intellectual property law areas.

We are surely living in an information age and are a global information society. It has been called a revolutionary period equivalent to the Industrial Revolution. It clearly has the potential to change how we do things, and the industries and the countries that stay on the cutting edge of this new age of information and technology will lead the world into the next century.

The Information Age has great potential for good. For example, there may be no more rush-hour traffic because now we may communicate from our home; when we become sick, we can go to our local health clinic and be placed in a diagnostic chair. We won't even have to see the doctor or go to a hospital unless we're seriously sick. And if we have a legal problem, push the right key and receive legal advice electronically. If we wish to continue our education or need the latest information for our business, the Internet will allow us to access a world of information. This new medium of communication could replace newspapers, books, and sound recordings. It could provide an encyclopedia at every child's fingertips.

We don't know for certain how many people use the Internet, but it's been estimated recently that as many as 37 million adults in the United States and Canada are chatting through something called cyberspace. This is a truly "new frontier," this wild and woolie World Wide Web. It needs to be encouraged and it needs to be regulated as little as possible.

In order for the superhighway to develop and function effectively, however, it needs information. People will not put their work product on the Internet if they can't protect it. Clarifying the copyright law can unleash the economic potential of the Internet. And that's what we believe these bills before us do.

Cyberspace has created a new age in the world of copyright. Digitization now allows us to send and retrieve perfect copies of copyrighted information over the National and Global Information Infrastructure, "NII" and "GII." With these evolutions in technology, the copyright law must evolve as well to protect one of our Nation's most valuable resources and exports, the products of our authors. Whether it be movies, videos, compact discs, software programs, sound recordings, video games or books, we know that the NII and GII will change the landscape as to how these products are delivered to the marketplace. Understandably, copyright owners will not make their works available in the digital environment until the material can be effectively protected, since computerized networks now make unauthorized reproduction, adoption, distribution, and other uses of works so easy.

This hearing is a starting point. While it does not address all of the issues that need to be considered on protecting intellectual property on the NII and GII, including provisions regarding special uses by libraries, it represents generally the steps which we must undertake in protecting access to creative works. I am looking forward to today's testimony.

[The bills, H.R. 2441 and S. 1284, follow:]

104TH CONGRESS
1ST SESSION

H. R. 2441

To amend title 17, United States Code, to adapt the copyright law to the digital, networked environment of the national information infrastructure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1995

Mr. MOORHEAD (for himself, Mrs. SCHROEDER, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to adapt the copyright law to the digital, networked environment of the national information infrastructure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "NII Copyright Protec-
5 tion Act of 1995".

6 **SEC. 2. TRANSMISSION OF COPIES.**

7 (a) DISTRIBUTION.—Section 106(3) of title 17,
8 United States Code, is amended by striking "or by rental,

