

PART P1

NII COPYRIGHT PROTECTION ACT OF 1995 (PART 2)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON

COURTS AND INTELLECTUAL PROPERTY

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 2441

NII COPYRIGHT PROTECTION ACT OF 1995

FEBRUARY 7 AND 8, 1996

Serial No. 38



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

23-886

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052422-9

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, *Illinois, Chairman*

CARLOS J. MOORHEAD, *California*
F. JAMES SENSENBRENNER, Jr.,
Wisconsin

BILL McCOLLUM, *Florida*
GEORGE W. GEEKAS, *Pennsylvania*
HOWARD COBLE, *North Carolina*
LAMAR SMITH, *Texas*

STEVEN SCHIFF, *New Mexico*
ELTON GALLEGLY, *California*
CHARLES T. CANADY, *Florida*
BOB INGLE, *South Carolina*
BOB GOODLATTE, *Virginia*
STEPHEN E. BUYER, *Indiana*
MARTIN R. HOKE, *Ohio*
SONNY BONO, *California*
FRED HEINEMAN, *North Carolina*

ED BRYANT, *Tennessee*
STEVE CHABOT, *Ohio*
MICHAEL PATRICK FLANAGAN, *Illinois*
BOB BARR, *Georgia*

ALAN F. CONVEY, Jr., *General Counsel/Staff Director*
JULIAN ERETEIN, *Minority Staff Director*

SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY

CARLOS J. MOORHEAD, *California, Chairman*

F. JAMES SENSENBRENNER, Jr.,
Wisconsin
HOWARD COBLE, *North Carolina*
BOB GOODLATTE, *Virginia*
SONNY BONO, *California*
GEORGE W. GEEKAS, *Pennsylvania*
ELTON GALLEGLY, *California*
CHARLES T. CANADY, *Florida*
MARTIN R. HOKE, *Ohio*

PATRICIA SCHROEDER, *Colorado*
JOHN CONYERS, Jr., *Michigan*
HOWARD L. BERMAN, *California*
XAVIER BECERRA, *California*
RICK BOUCHER, *Virginia*
JERROLD NADLER, *New York*

THOMAS E. MOONEY, *Chief Counsel*
JOSEPH V. WOLFE, *Counsel*
MITCH GLAZIER, *Assistant Counsel*
JON DUDAS, *Assistant Counsel*
BETTY WHEELER, *Minority Counsel*

(II)

CONTENTS

HEARINGS DATES

	Page
February 7, 1996	1
February 8, 1996	163

TEXT OF BILL

H.R. 2441	5
-----------------	---

OPENING STATEMENT

Moorhead, Hon. Carlos J., a Representative in Congress from the State of California, and chairman, Subcommittee on Courts and Intellectual Property	1
---	---

WITNESSES

Black, Edward J., president, Computer & Communications Industry Association	62
Cook, William J., attorney, William, Brinks, Hofer, Gilson & Lione	277
Gashel, James, director, government affairs, National Federation of the Blind	203
Heaton, Stephen M., general counsel and secretary, CompuServe, Inc.	234
Holleyman, Robert, president, Business Software Alliance	55
Kelly, John, vice president, consumer services, Recording for the Blind	206
McDaniels, Garry L., president, Skills Bank Corp., on behalf of the Software Publishers Association	84
Munder, Barbara A., senior vice president, the McGraw-Hill Cos., Inc.	69
Murphy, Edward M., president and CEO, National Music Publishers' Association, Inc.	35
Ostfeld, David M., vice chairman, IEEE United States Activities Board, and vice chairman, IEEE-USA Intellectual Property Committee	91
Pings, Dr. Cornelius J., president, Association of American Universities	218
Preston, Frances W., president and CEO, Broadcast Music, Inc.	25
Purcell, Scott, president, HLC Internet, Inc.	273
Robinson, Richard, chairman, president, and CEO, Scholastic, Inc., on behalf of the Association of American Publishers	178
Shapiro, Gary L., chairman, Home Recording Rights Coalition, and president, Consumer Electronics Manufacturers Association	79
Simmons-Gill, Catherine, president, International Trademark Association, and general counsel, General Media International, Inc.	297
Simon, Jeanne Hurley, Chairperson, U.S. National Commission on Libraries and Information Science	152
Tinsley, Tuck, III, Ph.D., president, American Printing House for the Blind, Inc.	169
Valenti, Jack, president and CEO, Motion Picture Association of America, Inc.	21

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARINGS

Black, Edward J., president, Computer & Communications Industry Association: Prepared statement	65
Submissions to Chairman Moorhead's questions	142
Cook, William J., attorney, William, Brinks, Hofer, Gilson & Lione: Prepared statement	281

(III)

IV

	Page
Heaton, Stephen M., general counsel and secretary, CompuServe, Inc.: Prepared statement	238
Holleyman, Robert, president, Business Software Alliance: Prepared statement	57
Submissions to Congressman Goodlatte's questions	103
McDaniels, Garry L., president, Skills Bank Corp., on behalf of the Software Publishers Association: Prepared statement	85
Moorhead, Hon. Carlos J., a Representative in Congress from the State of California, and chairman, Subcommittee on Courts and Intellectual Property: Requests for written testimony on H.R. 2441 from 43 entities	2
Munder, Barbara A., senior vice president, the McGraw-Hill Cos., Inc.: Prepared statement	71
Submissions to Chairman Moorhead's questions	144
Murphy, Edward M., president and CEO, National Music Publishers' Association, Inc.: Prepared statement	38
Ostfeld, David M., vice chairman, IEEE, United States Activities Board, and vice chairman, IEEE-USA Intellectual Property Committee: Prepared statement	93
Submissions to Chairman Moorhead's questions	149
Pings, Dr. Cornelius J., president, Association of American Universities: Prepared statement	221
Preston, Frances W., president and CEO, Broadcast Music, Inc.: Prepared statement	26
Robinson, Richard, chairman, president, and CEO, Scholastic, Inc., on behalf of the Association of American Publishers: Prepared statement	182
Shapiro, Gary L., chairman, Home Recording Rights Coalition, and president, Consumer Electronics Manufacturers Association: Prepared statement	81
Submissions to Chairman Moorhead's questions	146
Simmons-Gill, Catherine, president, International Trademark Association, and general counsel, General Media International, Inc.: Prepared statement	300
Simon, Jeanne Hurley, Chairperson, U.S. National Commission on Libraries and Information Science: Prepared statement	157
Tinsley, Tuck, III, Ph.D., president, American Printing House for the Blind, Inc.: Prepared statement	174
Valenti, Jack, president and CEO, Motion Picture Association of America, Inc.: Information concerning section 1201, title 17, H.R. 2441	51
Prepared statement	23

APPENDIX

Material submitted for the hearings	323
---	-----

NII COPYRIGHT PROTECTION ACT OF 1995

(Part 2)

WEDNESDAY, FEBRUARY 7, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS AND
INTELLECTUAL PROPERTY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:58 p.m., in room 2237, Rayburn House Office Building, Hon. Carlos J. Moorhead (chairman of the subcommittee) presiding.

Present: Representatives Carlos J. Moorhead, F. James Sensenbrenner, Jr., Bob Goodlatte, Sonny Bono, Patricia Schroeder, and Rick Boucher.

Also present: Thomas E. Mooney, chief counsel; Jon Dudas, assistant counsel; Mitch Glazier, assistant counsel; Sheila Wood, secretary; Betty Wheeler, minority counsel; and Stephanie Peters, minority counsel.

OPENING STATEMENT OF CHAIRMAN MOORHEAD

Mr. MOORHEAD. The Subcommittee on Courts and Intellectual Property will come to order. Why are we here today? Because copyrights are a unique trade asset for this country. The Congress must take every reasonable step to protect them both here and abroad. In 1993, the copyright industries, which include movies, TV programs, home videos, books, music, sound recordings, and computer software, accounted for 3.7 percent of the U.S. gross domestic product. This means \$238.6 billion.

Between 1977 and 1993, employment in the U.S. copyright industries more than doubled to 3 million workers, which is 2.5 percent of the total U.S. work force. Between 1988 and 1993, U.S. copyright industry employment grew almost four times the annual rate of the whole economy, 2.6 percent versus 0.7 percent. The copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector, including aircraft, primary metals, textiles, apparel, or chemicals.

In 1993, the U.S. copyright industries achieved estimated foreign sales of \$45.8 billion. After automobiles and parts, the copyright industry is the second largest industry in exports.

We are at the beginning of a new frontier in the distribution and reproduction of copyrighted works and the means by which we will communicate globally. It is predicted that the information age, which is now just beginning, will be a revolutionary period equivalent

(1)

lent to the Industrial Revolution. I predict the use of the Internet and other information technologies will explode once copyrighted works are protected and secure encryption technology is allowed.

The development of works and technology to protect them needs to be encouraged and needs to be regulated as little as possible. The Internet 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 21st century and beyond. The Internet provides American creators with an exciting new method by which we can lead the world in innovation and consumer services. It has the potential of allowing intellectual property industries, from large companies to small startup businesses, to account for an even greater trade surplus and to employ even more Americans, contributing to a healthier economy.

That is why we are here today, to start in motion a process which will encourage creativity and the development of technology. Being at the starting line has some drawbacks. We do not yet know what technologies the marketplace will develop to protect our valuable intellectual property. We do not know who will be able to have actual knowledge of the existence of a copyrighted work on the Internet or control over its dissemination. And so we must cautiously wade into this pool, testing the waters by carefully changing our successful copyright system only as needed.

The bill before us today is 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 areas of intellectual property law. H.R. 2441 and its sister bill pending in the Senate, S. 1284, will represent the collective input of Congress, the administration and private industry to best protect copyrighted works on the Internet.

Without objection, I submit for the record a list of 43 associations, groups and government entities which have been asked to provide written testimony to supplement the hearing record, which will include the testimony provided on the first day of hearings on November 15, 1995, at a joint hearing with the Senate Judiciary Committee along with the statements and testimony of the 18 witnesses the subcommittee will hear today and tomorrow.

[The information follows:]

REQUESTS FOR WRITTEN TESTIMONY ON H.R. 2441

American Intellectual Property Law Association.
BMG Entertainment.
American Society of Composers Authors and Publishers.
Walt Disney Corporation.
Capital Cities/ABC, Inc.
Intellectual Property Owners, Inc.
Interactive Digital Software Association.
Magazine Publishers of America.
National Association of Broadcasters.

Societe des Auteurs et Compositeurs Dramatiques.
 Recording Industry Association of America.
 Time Warner.
 Viacom International.
 Association for Computing Machinery.
 American Library Association.
 Recording for the Blind & Dyslexic.
 Directors' Guild of America.
 American Committee for Interoperable Systems.
 Sun Microsystems, Inc.
 Digital Future Coalition.
 National Public Radio.
 Public Broadcasting Service.
 Cincom Systems, Inc.
 Electronic Data Systems.
 Author Services, Inc.
 America Online, Inc.
 Newsletter Publishers Association.
 Virtual Marketing.com.
 Copyright Clearance Center.
 American Bar Association.
 American Historical Association.
 Digimarc.
 National Federation of the Blind.
 Creative Incentive Coalition.
 Sprint.
 SESAC.
 Microsoft Corporation.
 National Consumers League.
 The National Humanities Alliance (NHA).
 Consumer Federation of America.
 Alliance for Public Technology.
 U.S. Trade Representative, Executive Office of the President.
 U.S. Customs Service, Department of the Treasury.

Mr. MOORHEAD. In order for the superhighway to develop and function effectively, it needs information and desired content. People will not put their work products on the Internet and give consumers desired services if they cannot protect them. Clarifying the copyright law can unleash the economic potential of the Internet and that is what I believe the bill before us does.

H.R. 2441 clarifies and updates the copyright law in three important respects: It codifies courts decisions clarifying that the right of public distribution of U.S. copyright law applies to digital transmissions on computers; two, it prohibits the importation, manufacture or distribution of a device designed to circumvent a technological process created to protect copyrighted materials, especially applicable to the digital environment; and three, it prohibits providing false information about or altering the identification of a copyright owner or the conditions for use of a copyrighted work.

There is concern over the reach of the provisions of the bill prohibiting so-called black boxes, which is intended only to allow a remedy for the purposeful act of making devices to allow free access to copyrighted works. Today's hearing will examine options for the tailoring and drafting of this provision to achieve only that purpose.

The pending legislation does not alter the copyright liability standard for online service providers. It makes no change in this regard. These continued hearings will consider a number of issues related to the protection of copyrighted information on the Internet. I support a continuing dialog among the online service providers with copyright owners to examine whether or not a change in the

state of the law is warranted regarding liability and encourage the longstanding dialog organized by the working group on the issue of fair use.

As I have stated repeatedly, these hearings are a starting point. I believe H.R. 2441 represents generally the steps which we must undertake in this Congress to provide access to creative works. I am looking forward to today's testimony.

[The bill, H.R. 2441, follows:]

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,

1 lease, or lending" and inserting "by rental, lease, or lend-
2 ing, or by transmission".

3 (b) DEFINITIONS.—Section 101 of title 17, United
4 States Code, is amended—

5 (1) in the definition of "publication", by strik-
6 ing "or by rental, lease, or lending" in the first sen-
7 tence and inserting "by rental, lease, or lending, or
8 by transmission"; and

9 (2) in the definition of "transmit", by inserting
10 at the end thereof the following: "To 'transmit' a re-
11 production is to distribute it by any device or proc-
12 ess whereby a copy of phonorecord of the work is
13 fixed beyond the place from which it was sent."

14 (c) IMPORTATION.—Section 602 of title 17, United
15 States Code, is amended by inserting "whether by carriage
16 of tangible goods or by transmission," after "Importation
17 into the United States,".

18 **SEC. 3. EXEMPTIONS FOR LIBRARIES AND THE VISUALLY**
19 **IMPAIRED.**

20 (a) LIBRARIES.—Section 108 of title 17, United
21 States Code, is amended—

22 (1) in subsection (a)—

23 (A) by striking "one copy or phonorecord"
24 and inserting "three copies or phonorecords";

