A number of major national advertisers have also experienced the problem of domain name piracy. As they attempted to register their corporate name, or the name of specific branded products they manufacture, they were informed by InterNIC that those domain names had already been registered by some third party.

In some cases, the third party was a business competitor. In some cases, the third party was a satisfied customer of the company who simply wanted to converse with other satisfied customers over the Internet. Some third parties are unhappy customers who saw an opportunity for mischief, or simply "entrepreneurs" who saw a chance to make some money by selling an Internet domain name to the trademark owner.

Whatever the identity or motive of the third party, in each case, they have violated the intellectual property rights of the trademark owner. Trademarks are extremely valuable corporate assets. Companies spend many millions of dollars building consumer identification and loyalty through trademarks and brand names. The owner of a trademark is entitled to the exclusive use of that mark and to prevent unauthorized third parties from using the trademark or a confusingly similar mark. Any inappropriate use of the mark, whether malicious or innocent, can seriously dilute the value of the trademark.

As H.R. 2441 proceeds to markup in the Subcommittee, we strongly urge you to amend the bill to specifically make clear that trademarks are fully protected on the NII.

Copyrighted Material and Trademarks are At Risk on the NII

We are also concerned about inappropriate alteration or use of trademarks and copyrighted material by third parties. At the present time, there is essentially no effective security for intellectual property rights on the Internet. Copyrighted and trademarked material which is provided by companies can be accessed by anyone and indiscriminately downloaded. Once downloaded, those materials can be manipulated and altered in ways very damaging to the property owner, and with the click of a few keys, made available to millions around the world.

According to *Advertising Age*, a major toy manufacturer recently discovered that *Urban Desires*, a sexually oriented Web magazine (http://desires.com), contained altered, inappropriate pictures of the image and trademark of one of its most popular toys. Entertainment companies have discovered that pirated, altered copies of their cartoons, games and videos are available in various forms online.

Since online advertising messages themselves can be easily manipulated, companies face a serious risk that their advertising could be altered and retransmitted to deceive potential consumers. For example, several national advertisers have discovered that without their consent or knowledge, their corporate logo has been placed on a third party's web site to indicate "support" for the activities and information available at that site.

As a result of these serious problems, companies are working much more proactively to protect their intellectual property interests. They are placing trademark and copyright information in all of their online materials. They routinely "surf" the Internet to be certain that others are not improperly using their trademarks, trade names or logos. They are taking direct action against violators, through litigation when necessary.

Private industry is also working to develop various technologies to more fully protect their copyright interests. These technologies include digital signatures, encryption and various access controls. We strongly support Section 4 of H.R. 2441, which imposes civil and criminal penalties for those who attempt to circumvent such copyright protection systems.

Finally, it is important to note that intellectual property rights must be adequately protected at the international level, as well as the national level. The NII has already become the Global Information Infrastructure and companies face similar piracy risks at the international level. A company which has registered its trade name with InterNIC may nevertheless find that its domain name has been registered in another country by a foreign pirate. For that reason, we believe that Congress should develop mechanisms to work with international bodies, such as the World Intellectual Property Organization, to provide solutions to these growing problems.

Conclusion

As the Information Infrastructure Task Force concluded last year: "unless the framework for legitimate commerce is preserved and adequate protection for copyrighted works is ensured, the vast communications network will not reach its full potential as a true, global marketplace. Copyright protection is not an obstacle in the way of the success of the NII; it is an essential component." "White Paper" at page 16.

We appreciate the opportunity to provide these comments. As H.R. 2441 proceeds to markup in the Subcommittee, we urge you to provide full protection for both copyright and trademark interests on the NII.

The development of the NII and the GII is of critical interest to ANA and all of our member companies. In 1994, we joined with our sister association, the American Association of Advertising Agencies (AAAA), to form CASIE, the Coalition for Advertising Supported Information and Entertainment. The goal of CASIE is to create an environment where consumers have the broadest possible array of high-quality media options at the lowest possible cost. We believe that advertising revenue must continue to be a key funding source for information and entertainment in the evolving world of media.

We would appreciate the opportunity to work with you and other members of the Congress to craft legislation which will enable the NII and the GII to develop to their fullest potential, while protecting the intellectual property rights of companies that conduct business in cyberspace.

Thank you for your consideration of our views.

Sincerely,

Daniel L. Jaffe

c: John J. Sarsen, Jr.

THE LIBRARIAN OF CONGRESS
WASHINGTON, D.C. 20540-1000

February 15, 1996

Dear Mr. Chairman:

Last fall, I was most grateful when your Subcommittee on Courts and Intellectual Property led off the hearings on H.R. 2441 with testimony from Marybeth Peters, the Register of Copyrights. I am also appreciative that you have asked the Register to help resolve the issue of a possible exemption for libraries within the framework of copyright term extension. I am writing today to offer the services of the Library and the Copyright Office to the Subcommittee during its consideration of H.R. 2441. The complexity of these issues is manifest, as is the commitment and interest from a broad array of affected parties to work with your subcommittee and with the Senate to craft the best possible legislation.

As Librarian of Congress, I am keenly aware of the copyright issues raised by new digital technology. The creation of the National Digital Library -- and particularly the inclusion of 20th century materials in all media -- is important for the educational needs of the nation and a critical priority for the Library of Congress. The resolution both of copyright term extension and revisions in the copyright law for the digital environment will affect how we and libraries across the country make resources necessary for education and productivity widely available to citizens, researchers, and students.

The Library and the Copyright Office stand ready to assist the Subcommittee in any way possible to accommodate the desire expressed by many interested parties to craft solutions to some of the concerns raised with the present bill. As the Register indicated in her testimony to the Subcommittee in November, while supporting the provisions of H.R. 2441, the "areas left untouched may be equally as significant as the proposed amendments." A number of representatives of non-profit educational institutions and commercial information distributors have expressed deep concerns to me about the implications and possibly unintended consequences of the legislation. They believe it is essential (and I suspect that it would be beneficial) for the statute to clarify areas of concern rather than to leave these questions to lengthy, expensive, and often contradictory court proceedings to resolve.

You and your predecessors have turned to the Library and the Copyright Office many times in the past to provide forums where competing interests may meet and resolve differences in the best interests of all. The Library can contribute to the desire of many groups for further work and resolution on the issues of fair use, the concerns of libraries and others with respect to on-line liability, first sale or other elements of H.R. 2441.

The Library and the Copyright Office may be of particular service to the Congress if the Conference on Fair Use is concluded without agreement on basic guidelines. In that event, I would offer any and all assistance to your Subcommittee for all parties to work with the Register and her staff in a more formal and focussed discussion that would yield results. The fair use doctrine plays a critical role in the balance between the rights of copyright owners and the interests of the users of copyrighted works. Fair use, in my view, must continue to play this critical role in the digital environment. Other issues that might benefit from extended analysis and discussion might similarly be referred to the Copyright Office, as you have done already this Congress.

Thank you for your consideration of these views. We look forward to assisting the Subcommittee in any way possible and offer heartfelt appreciation for your commitment to bringing the copyright law into the 21st century.

Sincerely,

James H. Billington
The Librarian of Congress

The Honorable
Carlos J. Moorhead
Chairman
Subcommittee on Courts and Intellectual Property
B351A Rayburn
U.S. House of Representatives
Washington, DC 20515

Sprint

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Telephone: (202) 828-7412

James E. Lewin, Jr.
Vice President
Government Affairs

February 21, 1996

The Honorable Carlos J. Moorhead
Chairman
Committee on the Judiciary
Subcommittee on Courts and Intellectual Property
B351-A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Moorhead:

I'd like to thank you for the opportunity to provide Sprint's views on HR 2441, the "NII Copyright Protection Act of 1995." Sprint is a global telecommunications company, providing long distance, local and wireless telecommunications services, and is the world's largest carrier of Internet traffic.

As a technology-driven company, Sprint understands the importance our laws place on protecting intellectual property rights. We therefore appreciate this Committee's interest in ensuring that copyright owners' rights are not compromised by the unauthorized appearance of those materials on new electronic media.

At the same time, Sprint has served as a telecommunications carrier for the past 97 years, and has a strong perspective on the carefully defined role a common carrier plays in providing communications services.

Sprint supports the extension of current interpretations of copyright law, such as the Netcom decision, which recognize that service provider liability may only attach in very limited circumstances. However, we share the concern expressed in the testimony of the Commercial Internet Exchange Association ("CIX") that the bill may go well beyond those current interpretations, by imposing either direct or vicarious liability upon service or access providers, for content they did not create and could not control.

Additionally, we believe that where a party is functioning solely as an access provider, the bill should be modified to recognize that the provider is acting as a "common carrier" under the Communications Act, with the attendant responsibilities and protections offered by that statute. Just as telegraph and telephone systems have served as the nation's communication pipelines through the 19th and 20th centuries, computer networks will serve as a critical communication pipeline through the 21st century. The law has long recognized that the common carrier – the pipeline operator – should not serve as the arbiter of content carried on its network. Its role is to make available, without discrimination, a ". . . .rapid, efficient nation-wide, and world-wide wire and radio communication service. . . ." 47 U.S.C. sec. 151. The courts have recognized that if such companies

> are to handle such a volume of business expeditiously, it is obvious that their agents cannot spend much time pondering the contents of the messages. . . . The effect of putting such a burden upon the telegraph companies could only result in delayed transmission of, and in some cases refusal to transmit, messages which the courts after protracted litigation might ultimately determine to have been properly offered for transmission and which the sender was entitled to have dispatched promptly. **O'Brien v. Western Union Telegraph Co.**, 113 F.2d 539, 542 (1st Cir. 1940).

Another Court has described "the primary sine qua non of common carrier status" as "the undertaking 'to carry for all people indifferently'" and that "the system be such that customers 'transmit intelligence of their own design and choosing.'" **National Ass'n of Regulatory Utility Commissioners v. FCC**, 533 F.2d 601, 608-09 (D.C. Cir. 1976).

Thus, the FCC has held that while it is unlawful for carriers to carry obscene communications, it is not for the carrier to determine unilaterally whether or not particular subject matter is obscene. **Notice of Inquiry**, 48 Fed. Reg. 43,348 (1983). Likewise, the FCC has emphasized that when a carrier is asked to deny a customer the use of its facilities, based on alleged unlawful Customer conduct, the carrier should seek a ruling on the illegality prior to unilaterally refusing service. **Humane Society v. Western Union International, Inc.**, 30 FCC 2d 711, 713 (1971). **In the Matter of Enforcement of Prohibitions Against**

the Use of Common Carriers For the Transmission of Obscene Materials, 2 FCC Rcd 2819, 62 Rad. Reg. 2d (P&F) 1517 (1987).

A common carrier is not a federal judge nor should it be put in a position of policing the content of communications over its network. Under current law, it is required to provide service without discrimination, and is neither qualified nor expected to render judgment on whether communications on its facilities constitute obscenity, or illegal gambling, or infringements under the Copyright Act. If a carrier is presented with evidence that its Customer has acted unlawfully -- such as a court decision, or notification from a law enforcement authority -- it may properly discontinue service. See, e.g., **Palermo v. Bell Telephone Company of Pennsylvania**, 415 F.2d 298 (3d Cir. 1969). But absent actual notice that activity carried on its network is in fact unlawful, the carrier is obliged to provide service.

As a common carrier, an access provider's primary responsibility is to perform its function as a communications pipeline -- it cannot and should not be expected to police its network for copyright infringements and to pass judgment on copyright disputes.

Again, thank you for the opportunity to provide these comments. Sprint stands ready to assist you and your colleagues in this effort.

Sincerely,

James E. Lewin

copies to: Members of the House Committee on the Judiciary
Alan Coffey, Jr.
Thomas E. Mooney
Mitchell Glazier
Julian Epstein
Perry Apelbaum
Betty Wheeler

WRITTEN STATEMENT OF

PETE HIGGINS

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THE IMPORTANCE OF INTELLECTUAL PROPERTY PROTECTION ON THE INTERNET

BEFORE THE
SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY
OF THE HOUSE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

FEBRUARY 7, 1996