

**WIPO COPYRIGHT TREATIES IMPLEMENTATION
ACT; AND ONLINE COPYRIGHT LIABILITY LIMITATION ACT**

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

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H.R. 2281

WIPO COPYRIGHT TREATIES IMPLEMENTATION ACT
AND

H.R. 2280

ONLINE COPYRIGHT LIABILITY LIMITATION ACT

SEPTEMBER 16 AND 17, 1997

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H.R. 2281, WIPO COPYRIGHT TREATIES IMPLEMENTATION ACT AND H.R. 2180, ONLINE COPYRIGHT LIABILITY LIMITATION ACT

TUESDAY, SEPTEMBER 16, 1997

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

The subcommittee met, pursuant to call, at 10 a.m. in room 2141, Rayburn House Office Building, Hon. Howard Coble (chairman of the subcommittee) presiding.

Present: Representatives Coble, Sesenbrenner, Gallegly, Goodlatte, Bono, Pease, Cannon, McCollum, Canady, Frank, Conyers, Berman, Boucher, Lofgren, Delahunt.

Staff present: Mitch Glazier, chief counsel; Eunice Goldring, staff assistant; Robert Raben, minority counsel.

OPENING STATEMENT OF CHAIRMAN COBLE

Mr. COBLE. Good morning, ladies and gentlemen, as you all know, I like to commence these meetings in a timely fashion, and I want to reward you all by being here in a timely fashion. And I see the gentleman from California is here, so we can now lawfully begin.

Today and tomorrow we will conduct a hearing on H.R. 2281, the WIPO Copyright Treaties Implementation Act, and H.R. 2180, the On-Line Copyright Liability Limitation Act.

[Bills H.R. 2281 and H.R. 2180 follow:]

(1)

105TH CONGRESS
1ST SESSION

H. R. 2281

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1997

Mr. COBLE (for himself, Mr. HYDE, Mr. CONYERS, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary:

A BILL

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

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 "WIPO Copyright Trea-
5 ties Implementation Act".

6 **SEC. 2. TECHNICAL AMENDMENTS.**

7 (a) DEFINITIONS.—Section 101 of title 17, United

8 States Code, is amended—

Mr. COBLE. The digital environment now allows users to send and retrieve perfect reproductions of copyrighted material over the Internet on computers and televisions. With these evolutions in technology, the law must evolve as well to protect intellectual creations, and to provide a convenient means of access to those creations for consumers.

In Geneva, Switzerland, in December of 1996, a Diplomatic Conference was convened under the auspices of the World Intellectual Property Organization—WIPO, known to you all—to protect copyrighted material in the digital environment and to provide stronger international protection to performers and producers of phonograms.

The treaties do not require that the United States change the substance of our domestic copyright rights or exceptions. They do require that we address the problems posed by the possible circumvention of technologies, such as encryption, which will be used to protect copyrighted works in the digital environment and for the development of secure on-line licensing systems.

The WIPO Copyright Treaties Implementation Act attempts to address this problem in an equitable fashion, and I look forward to the debate we will hear on that bill, and I am sure it will be a debate.

The On-Line Copyright Liability Limitation Act was introduced in response to concerns raised by a number of on-service and Internet access providers, regarding their potential liability for copyright infringement when infringing material is transmitted on-line through their services. While several judicially created doctrines currently address the question of when liability is appropriate, providers have sought greater certainty through legislation as to how these doctrines will apply in the digital environment.

Undoubtedly, service providers will be concerned that the exemption contained in this bill does not go far enough, and copyright owners conversing will be concerned that it goes too far. This bill is meant to be a new starting point for discussion among the groups affected by its provisions.

Bob Goodlatte of Virginia, a Member of our Subcommittee, invested months of his time in the last Congress you all will recall, leading negotiating sessions between on-line service and Internet access providers, telephone companies, libraries, universities and copyright owners. He will continue to steer the negotiation process in this Congress as the parties involved begin discussions, starting from the framework established in the On-Line Copyright Liability Limitation Act. I also look forward to the debate we will hear on this bill today and tomorrow.

[The Statement of Mr. Coble follows:]

PREPARED STATEMENT OF HON. HOWARD C. COBLE, CHAIRMAN, SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY, COMMITTEE ON THE JUDICIARY

Good morning. The Subcommittee will come to order.

Today and tomorrow we will conduct a hearing on H.R. 2281, the "WIPO Copyright Treaties Implementation Act," and H.R. 2180 the "On Line Copyright Liability Limitation Act."

The digital environment now allows users to send and retrieve perfect reproductions of copyrighted material over the Internet on computers and televisions. With these evolutions in technology, the law must evolve as well to protect intellectual

creations, and to provide a convenient means of access to those creations for consumers.

In Geneva, Switzerland, in December, 1996, a Diplomatic Conference was convened under the auspices of the World Intellectual Property Organization ("WIPO"), to protect copyrighted material in the digital environment and to provide stronger international protection to performers and producers of phonograms.

The treaties do not require that the United States change the substance of our domestic copyright rights or exceptions. They do require that we address the problems posed by the possible circumvention of technologies, such as encryption, which will be used to protect copyrighted works in the digital environment and for the development of secure on-line licensing systems. The "WIPO Copyright Treaties Implementation Act" attempts to address this problem in an equitable fashion and I look forward to the debate we will hear on that bill.

The "On-Line Copyright Liability Limitation Act" was introduced in response to concerns raised by a number of on-line service and Internet access providers regarding their potential liability for copyright infringement when infringing material is transmitted on-line through their services. While several judicially created doctrines currently address the question of when liability is appropriate, providers have sought greater certainty through legislation as to how these doctrines will apply in the digital environment. Undoubtedly, service providers will be concerned that the exemption contained in this bill does not go far enough and copyright owners will be concerned that it goes too far. This bill is meant to be a new starting point for discussion among the groups affected by its provisions.

Bob Goodlatte of Virginia, a valued Member of this Subcommittee, invested months of his time in the last Congress leading negotiation sessions between on-line service and Internet access providers, telephone companies, libraries, universities and copyright owners. He will continue to steer the negotiation process in this Congress as the parties involved begin discussions starting from the framework established in the "On-Line Copyright Liability Limitation Act". I also look forward to the debate we will hear on this bill today and tomorrow.

We have over 20 witnesses waiting to be heard, so I would like to recognize the Ranking Member for an opening statement, and then proceed directly to the testimony, with the assurance that every Member will have a chance to question each panel and that all Statements submitted will be entered into the record, without objection.

Mr. COBLE. We have over 20 witnesses waiting to be heard, so I would like to recognize—I was going to recognize the Ranking Member from Massachusetts. Mr. BERMAN, do you or Mr. BOUCHER—I would like to recognize one of you in the interest of time.

Who would rather go?

Mr. BOUCHER. Mr. Chairman, if I might say so, I think that since there are only two members here you could probably recognize both of us.

Mr. COBLE. Very well, understood. Mr. BERMAN is recognized for an opening statement.

Mr. BERMAN. Mr. Chairman, I would like to respectfully disagree with my colleague, Mr. Boucher, on this issue. Mr. Chairman, I do not have an opening statement.

Mr. COBLE. The gentleman is allowed an additional five minutes. No, I am kidding.

Mr. BERMAN. Mr. Chairman, I do not have an opening statement. It just seems to me that it is a key priority for this Congress to act on the implementing legislation submitted by the Administration on the not so recently concluded WIPO treaties, dealing with the digital technology and copyright protection.

We are talking here about industry—the export and the protection of copyrighted works which produces tens of billions of dollars in surplus balance of trade for this country, with very significant employment consequences, and additional strength to our economy.

We are somewhat analogous to a situation where, if we were talking in the world of tariffs, a trade agreement, where we essen-

