

**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

Serial No. 33



1521-1

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1997

44-181 CC

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

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, Chairman

F. JAMES SENSENBRENNER, Jr., Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
STEVEN SCHIFF, New Mexico
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB INGLIS, South Carolina
BOB GOODLATTE, Virginia
STEPHEN E. BUYER, Indiana
SONNY BONO, California
ED BRYANT, Tennessee
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
ASA HUTCHINSON, Arkansas
EDWARD A. PEASE, Indiana
CHRISTOPHER B. CANNON, Utah

JOHN CONYERS, Jr., Michigan
BARNEY FRANK, Massachusetts
CHARLES E. SCHUMER, New York
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
STEVEN R. ROTHMAN, New Jersey

THOMAS E. MOONEY, Chief of Staff-General Counsel
JULIAN EFSFEIN, Minority Staff Director

SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY

HOWARD COBLE, North Carolina, Chairman

F. JAMES SENSENBRENNER, Jr., Wisconsin
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
SONNY BONO, California
EDWARD A. PEASE, Indiana
CHRISTOPHER B. CANNON, Utah
BILL McCOLLUM, Florida
CHARLES T. CANADY, Florida

BARNEY FRANK, Massachusetts
JOHN CONYERS, Jr., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
ZOE LOFGREN, California
WILLIAM D. DELAHUNT, Massachusetts

MITCH GLAZIER, Chief Counsel
BLAINE MERRITT, Counsel
VINCE GARLOCK, Counsel
DEBBIE LAMAN, Counsel
ROBERT RABEN, Minority Counsel

(II)

CONTENTS

HEARING DATE

	Page
September 16, 1997	1
September 17, 1997	191

TEXT OF BILL

H.R. 2281	2
H.R. 2280	22

OPENING STATEMENT

Coble, Hon. Howard, a Representative in Congress from the State of North Carolina, and chairman, Subcommittee on Courts and Intellectual Property	1
---	---

WITNESSES

Adler, Allan R., vice president for legal and governmental affairs, Association of American Publishers	204
Belinsky, Mark S., vice president, Copy Protection Group, Macrovision Corporation, Sunnyvale, CA	271
Bennett, Douglas, president, Earlham College	240
Bettis, John, songwriter, on behalf of American Society of Composers, Authors and Publishers	167
Black, Edward J., president, Computer and Communications Industry Association	256
Byrne, Christopher, director of Intellectual Property, Silicon Graphics	249
Cash, Johnny, vocal artist	198
Dunn, Ronald G., president, Information Industry Association	172
Greenwood, M.R.C., chancellor of the University of California, Santa Cruz	64
Hollyman II, Robert W., president, Business Software Alliance	68
Jacobson, Marc, vice president and general counsel, Prodigy Services, Inc.	122
Kenswil, Lawrence, executive vice president, Business and Legal Affairs, Universal Music Group	128
Kirk, Michael K., executive director, American Intellectual Property Law Association	218
Lehman, Hon. Bruce A., assistant secretary and commissioner of patents and trademarks, Patent and Trademark Office, Department of Commerce ...	34
Markels, Gail, general counsel and senior vice president, Interactive Digital Software Association	212
Neel, Roy, president and chief executive officer, U.S. Telephone Association ...	82
Oakley, Robert L., prof. of law, Georgetown University Law Center, and director Georgetown University Law Library	148
Patel, Tushar, vice president and managing director, US WEB	113
Peters, Hon. Marybeth, register of copyrights, Copyright Office of the United States, Library of Congress	43
Rosen, Hilary B., president and chief executive officer, Recording Industry Association of America	200
Ryan, Thomas, chief executive officer, SciTech Software, Inc.	224
Shapiro, Gary J., president, Consumer Electronics Manufacturers Association	266
Valenti, Jack, president and CEO, Motion Picture Association of America	78
Wasch, Ken, president, Software Publishers Association	116
Willis, Allee, songwriter, on behalf of Broadcast Music Inc.,	156

(III)

IV

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

	Page
Adler, Allan R., vice president for legal and governmental affairs, Association of American Publishers: Prepared statement	205
Belinsky, Mark S., vice president, Copy Protection Group, Macrovision Corporation, Sunnyvale, CA: Prepared statement	273
Bennett, Douglas, president, Earlham College: Prepared statement	242
Bettis, John, songwriter, on behalf of American Society of Composers, Authors and Publishers: Prepared statement	168
Black, Edward J., president, Computer and Communications Industry Association: Prepared statement	259
Summary of testimony	258
Boucher, Rick: Prepared statement	193
Byrne, Christopher, director of Intellectual Property, Silicon Graphics: Prepared statement	250
Coble, Hon. Howard, a Representative in Congress from the State of North Carolina, and chairman, Subcommittee on Courts and Intellectual Property: Prepared statement	26
Dunn, Ronald G., president, Information Industry Association: Prepared statement	173
Greenwood, M.R.C., chancellor of the University of California, Santa Cruz: Prepared statement	66
Hollyman II, Robert W., president, Business Software Alliance: Prepared statement	70
Jacobson, Marc, vice president and general counsel, Prodigy Services, Inc.: Prepared statement	125
Kenswil, Lawrence, executive vice president, Business and Legal Affairs, Universal Music Group: Prepared statement	130
Kirk, Michael K., executive director, American Intellectual Property Law Association: Prepared statement	219
Lehman, Hon. Bruce A., assistant secretary and commissioner of patents and trademarks, Patent and Trademark Office, Department of Commerce: Prepared statement	36
Summary statement	35
Markels, Gail, general counsel and senior vice president, Interactive Digital Software Association: Prepared statement	214
Neel, Roy, president and chief executive officer, U.S. Telephone Association: Prepared statement	83
Oakley, Robert L., prof. of law, Georgetown University Law Center, and director Georgetown University Law Library: Letter dated September 16, 1997	154
Prepared statement	150
Patel, Tushar, vice president and managing director, US WEB: Prepared statement	114
Peters, Hon. Marybeth, register of copyrights, Copyright Office of the United States, Library of Congress: Prepared statement	44
Rosen, Hilary B., president and chief executive officer, Recording Industry Association of America: Prepared statement	201
Ryan, Thomas, chief executive officer, SciTech Software, Inc.: Prepared statement	225
Shapiro, Gary J., president, Consumer Electronics Manufacturers Association: Prepared statement	267
Valenti, Jack, president and CEO, Motion Picture Association of America: Prepared statement	79
Wasch, Ken, president, Software Publishers Association: Prepared statement	118
SPA's guidelines of Copyright Protection	122
Willis, Allee, songwriter, on behalf of Broadcast Music Inc.: Memorandum of Broadcast Music Inc.	162
Prepared statement	157

APPENDIX

Material submitted for the hearing	295
--	-----

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-

