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Legal Update

S. 1284: The National Information Infrastructure Copyright Protection Act†

On September 28, 1995, Senator Orrin G. Hatch (R-UT) and Senator Patrick J. Leahy (D-VT) introduced The National Information Infrastructure Copyright Protection Act. The bill was drafted to incorporate the recommendations of the Working Group on Intellectual Property Task Force, chaired by Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Office. The bill seeks to clarify and improve intellectual property rights protection over the National Information Infrastructure (“NII”) by amending the current Copyright Act of 1976 to suit the digital environment of the information superhighway. [1]

According to Senator Hatch, the bill fosters creativity and development of intellectual property in two ways. First, by clarifying and amending the current copyright act, the bill encourages authors to place their copyrighted works on the NII. Hatch compared the information superhighway to our standard highways and analogized his bill to "the rules of the road." He stated that nobody would send

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1 141 Cong. Rec. §§ 14547-05, 14550.

2 This task force was established in 1993 by the Clinton administration to examine the effects of the information superhighway on intellectual property law.


4 141 Cong. Rec. § 14547-05, § 14550.
their delivery trucks down a highway if they were consistently vulnerable to hijacking. Likewise, authors would be reluctant to place their works on the information superhighway—where they could be reproduced easily due to their digital format—unless adequate protection of their intellectual property rights was ensured. As Senator Leahy pointed out, the NII could not exist without content.

Second, this bill enables public access to works by authors who are unable to find a publisher by allowing authors to distribute their works at a low cost to a great number of people over the NII without fear of piracy.

The bill addresses five main areas of copyright law: the transmission of copies, exemptions for libraries and the visually impaired, copyright protection systems, copyright management information systems, and remedies for circumvention of copyright protection systems and deletion or alteration of copyright management information.

The bill makes clear that the right of public distribution under the current copyright law applies to copies and phonorecords of copyrighted works that are transmitted electronically. For example, under the proposed bill the electronic transmission of a copyrighted computer program to ten other computers would be a violation of the copyright laws. Current copyright law does not specifically make the electronic transmission of copyrighted material a violation, nor does it address whether electronic transmission is the equivalent of reproduction.

In addition, the bill increases the current exemption from copyright law for library and archive materials from a single reproduction for non-commercial use to three permissible reproductions, and allows libraries and archives to keep copies of copyrighted works in digital form for preservation purposes. The bill also adds a new section to the Copyright Act that allows non-profit organizations to reproduce and distribute copyrighted works at cost to the visually impaired. This includes reproductions in Braille, large type, audio, or other such editions of previously published works, provided that the copyright holder has not entered the market for such an edition within one year following first publication of the work.

Third, the bill adds a new chapter to the Copyright Act. The first section of the chapter prohibits the importation, manufacture or distribution of a device or

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5 Id.

6 Id. at § 14552.

7 Tentatively labeled Section 108A: Limitations on exclusive rights: Reproduction for the visually impaired.
product, or component thereof, or the offer or provision of any service, the primary purpose or effect of which is to de-activate any technological protections that prevent or inhibit violation of the exclusive rights granted under the copyright laws without the permission of the copyright holder. [7]

The second section of the new chapter defines copyright management information systems as "the name and other identifying information of the author of a work, the name and other identifying information of the copyright owner, terms and conditions for uses of the work, and such other information as the Register of Copyrights may prescribe by regulation." This section of the proposed chapter would prohibit the use of false copyright management information, the unauthorized removal or alteration of copyright management information without the permission of the copyright owner, and the distribution of such works with false information. [8]

The last section of the proposed new chapter provides civil penalties for the violation of the proposed amendments of the copyright law. The available civil penalties include injunction, impoundment, destruction or modification of products or devices, actual or statutory damages, court costs and attorney’s fees. The section also provides criminal sanctions for those who tamper with or provide false copyright management information with the intent to defraud. If found criminally liable, a violator may face up to $500,000 in fines, or imprisonment for up to five years or both. [9]

The increased access to copyrighted works that the information superhighway provides to millions poses a threat to the value of intellectual property and to the copyright law’s goal of encouraging the dissemination of creative works. Digital reproduction of copyrighted works can be performed easily and yield perfect copies. Such perfectly reproduced copies can be readily transmitted electronically and without sanctions. This bill represents a significant step forward in the protection of intellectual property rights in light of the increasing role of the information superhighway. [10]

-Bryan P. Collins