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Copyright Law and Electronic Access to Information

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COPYRIGHT LAW AND ELECTRONIC ACCESS TO INFORMATION

by Jessica Litman

Abstract

At the same time as we have been discovering the Internet's enormous potential to enhance access to information and revolutionize the ways libraries do business, the Internet's high profile in popular media has made it the focus of a wide spectrum of fears about the future. This paper focuses on pending proposals to amend copyright law to enhance the control copyright owners wield over the appearance of their works on digital networks. These proposals would stifle libraries' use of the Internet. Libraries and their supporters must participate in the copyright debate, and think creatively about new models for copyright. The paper is adapted from a speech given to the Library and Information Technology Association at the 1996 Annual Conference of the American Library Association.

Digital technology and the Internet have the potential to revolutionize the ways libraries do business, and to open up electronic access to information for millions of people who have not had meaningful access before. You don't need me to tell you that library groups have been looking at this potential for at least a decade. Libraries of various sorts have been gradually getting hooked up to the Internet and have been gradually exploring the potential of digital technology for reserves, for document delivery, for preservation.

Information in Electronic Form

Digital technology promises to address some of the problems caused by the fact that the texts in which we store our information are fragile: they deteriorate, fade, tear, and are vulnerable to vandalism and carelessness. Digital technology may solve the problems we have keeping track of where those texts have gotten to. Digital technology promises the first realistic long-term solution to the extraordinary expense of shelf space (and, as well, the expense of keeping up a comprehensive collection of things for convenient, fast reference, when one's clientele may only want to consult one issue of this or that obscure journal; and that only once every few years). I'm sure that, like me, you have sometimes needed to be at two places at one time, and wished for a matter transmitter. Digital technology gives us what is essentially a matter transmitter for documents. That enables us to stop making otherwise not-very-sensible decisions about what goes into library collections based on the fragility, or heft, or theft-potential of particular hard copies.

Digital technology also promises all sorts of new ways to enable libraries to serve their traditional functions as guardian and provider of our society's information resources. Maybe those possibilities will extend what libraries do, or even, just maybe, transform how they do it. We have already seen what virtual card catalogues and powerful search engines can do to enhance access to information. We are beginning to have some experience with electronic collections and hypertext-enhanced bibliographies. Many university libraries, and even a number of city public libraries, have established a presence on the World Wide Web, and have begun to experiment with things like virtual stacks.

It might be that if these possibilities all got up and running and were adopted on a widespread basis, they would significantly cut into copyright owners' opportunities to exploit their works; it might be that if they got up and running, they would substantially enhance copyright owners' opportunities to earn revenue from their works. We

don't know, yet. We can't find out unless we try it and see. History tells us that it can be very hard to predict these things: when the home video-cassette recorder hit the market, copyright owners predicted that unless Congress stepped in, the VCR would cause the demise of the American film and television business [1]. Today, the sales of videocassettes earn movie studios more money than theatrical releases, and films make enough money to pay Demi Moore seven million dollars to appear in a new, modernized movie version of "The Scarlet Letter" (a film that could be made only because Hawthorne's book had entered the public domain).

As the potential uses for this technology have become more clear, there has been lots of experimentation going on in libraries across the country, and there has been a great deal of progress. Until about three years ago, though, the progress had been pretty quiet, because the folks who understood digital technology or the Internet well enough to use it were a small crowd. But, in 1993, the "Information Superhighway" suddenly burst into the news, accompanied by the Clinton Administration's promise that the Information Superhighway would be the engine of explosive economic and technological growth.

Once the Info Superhighway became a media darling, it attracted a lot of attention from a lot of people who hadn't much noticed it before. ("E-mail? Is that the thing my kid keeps talking about? What's the "E" stand for?") In many ways, that's when the trouble started. A lot of made-up stories turned very quickly into received wisdom, and the Internet became a focus for a wide spectrum of fears about the future, and fears about the decline of civilization. Members of the United States Congress proposed some especially silly legal responses to those fears. More of those bills got further than they should have, in part because very few people who work on Capital Hill knew much about the Internet, and in part because very few of the groups who relied on the Internet for their daily business had paid lobbyists working on the Hill.

In that context, what has been going on with respect to recent copyright proposals in the United States is of a piece with the Communications Decency Act and other regrettable pieces of Internet-related legislation [2]. The copyright proposals coming out of the Clinton Administration, however, are a lot harder to get people excited about than the Communications Decency Act sort of stuff, and, in their current form, are likely to hit libraries and individuals seeking access to information harder than anyone else.

Copyright Law and ElectronicInformation

When the Internet captured all that media attention, it also captured the attention of copyright owner groups. Most copyright owner groups are used to looking at any incident of uncompensated use in the United States (loan or sale of a used book, for instance) as a blemish on the face of copyright [3]. A use that isn't paid for, that isn't controlled by the rights holder, is invariably unfortunate, wherever it belongs on the spectrum that ranges from undesirable loopholes all the way to outright piracy. Under this way of looking at things, fair use in America is an unfortunate, if probably necessary, evil that needs to be carefully constrained; the fact that copyrights eventually expire is a tragedy that U.S. Congress should address with appropriate legislation; and the detail that copyright does not and has never given copyright owners control over all uses of their works is a drafting problem that will eventually be solved.

There's a competing view, of course. American copyright law has always struck a balance between the public interest in access to works and copyright owners' interests in being able to earn money by exploiting works. Copyright in the U.S. has never given copyright owners rights over all uses of their works, precisely because Congress has always found it important to reserve rights to make many of those uses to the public. The vision of copyright as a carefully calibrated balance is a vision that copyright owners' groups are often not eager to convey to their Senators and Representatives. Consumer and users groups have written in, over the years, to remind Congress that copyright law embodies an important balance. Library groups and schools have persistently reminded Congress about that balance. And Congress's own copyright lawyer, the Register of Copyrights, who runs the Copyright Office (which, after all, is a part of the Library of Congress), has always been careful to remind Senators and Representatives that copyright is intended to strike an equilibrium between enhancing authors' opportunities to exploit the works they create and enhancing users' access to those works. The Register of Copyrights in the United States, Mary Beth Peters, probably knows as much about copyright law as anyone on the planet. Three years ago, however, Bruce Lehman, then the newly appointed United States

Commissioner of Patents, decided that instead of relying on the Register for guidance in copyright matters, Congress ought to listen to the Patent Commissioner.

Now, if you heard any of Commissioner Lehman's early speeches, right after he assumed office, you may recall that he characterized the expansion of copyright markets as an integral part of the Clinton Administration's plan for overall economic expansion. From the Commissioner's point of view, the Internet that he read about in the newspaper (at that point, he had not, apparently, ever signed onto the Internet to take a look for himself) looked like a huge potential market moping around, waiting for somebody to make use of it. Okay, maybe there were schools, scientists, libraries, nerds, and teenagers using the Internet, but no commercial entities were using it for commercial activity.

(Indeed, I shared a podium with Commissioner Lehman last March. He was still insisting that nobody really cared about most of the stuff that was on the Internet now, and we had to strengthen the copyright laws in order to make the Internet an attractive place for people to put content on that folks would want to read. It isn't clear to me what the Commissioner believes that twenty four million Americans are doing when they waste all that time hooked up to the Internet, but they obviously aren't reading anything interesting.)

The Working group on Intellectual Property

In any event, about three years ago, the Clinton Administration rechristened the Information Superhighway the "National Information Infrastructure" or NII when folks in Washington decided that "Information Superhighway" was a silly-sounding name. An Information Infrastructure Task Force was appointed and charged with formulating plans to harness the untapped potential of the NII, and put it to work to help bring about the American Dream in time for the 1996 Presidential campaign. The Task Force appointed an Intellectual Property Working Group, chaired by Commissioner Lehman. This Group put out a Report telling a story about how current copyright law applies to what happens on the Internet, and how copyright law needs to change to enable the Internet to reach its full potential as a commercial market for information and entertainment products.

The story the Task Force told, in a document that's known colloquially as the "White Paper," is that current copyright law already gives the copyright owner comprehensive control over every appearance or use of its works on the Internet [4]. Just to nail that down and make it perfectly clear, the report recommended that Congress should enact a modest amendment giving copyright owners even more comprehensive control over every single itty bitty appearance or use of their works over the Internet. The White Paper came with its own proposed implementing legislation; the legislation was introduced last fall, and it quickly attracted bipartisan support [5]. Initially, there were not many who thought that the legislation was a bad idea: a few copyright teachers, online service providers like Compuserve and America Online, a consumer electronics lobby, and most library organizations.

The library organizations had been on the case from the beginning: Back in 1993, when Patent Commissioner Bruce Lehman convened the Task Force's Working Group on Intellectual Property, the library community didn't just sit back and wait for the Administration to make its proposals. Fifteen American library and information organizations got together in September, 1993 in Washington and adopted a consensus document, outlining intellectual property principles that were crucial in making plans to develop the Information Superhighway. The consensus document stressed the importance of first amendment values and respect for intellectual freedom. It also stressed protection of privacy and the need for balance in copyright law. The document discussed how important it was to ensure that the public had wide access to information in a variety of forms, and it emphasized the need for interoperable, compatible hardware and software, and the standards that make that compatibility possible.

The library community sent a representative to the first, preliminary public hearing before the Working Group in November of 1993 [6]. It also sent written statements to the Working Group [7]. When the Working Group came out with an alarming preliminary draft proposal [8], library groups sent representatives to Chicago, Los Angeles, and Washington to testify at public hearings [9]. Members of library groups like the American Library

Association and the Association of Research Libraries requested meetings with the Administration, filed comments with the Working Group, and wrote letters to the Administration's Office of Management and Budget.

"Fair Use in the Electronic Age"

Seven different American library groups put together a statement called "Fair Use in the Electronic Age: Serving the Public Interest" in response to the Administration's draft proposal [10]. The statement was, one would think, pretty uncontroversial. Let me quote a small part of it:

> **Without infringing copyright, the public has a right to expect:**
>
> - to read, listen to, or view publicly marketed copyrighted material privately, on site or remotely;
> - to browse through publicly marketed copyrighted material;
> - to experiment with variations of copyrighted material for fair use purposes, while preserving the integrity of the original;
> - to make or have made for them a first generation copy for personal use of an article or other small part of a publicly marketed copyrighted work or a work in a library's collection for such purpose as study, scholarship, or research; and
> - to make transitory copies if ephemeral or incidental to a lawful use and if retained only temporarily.
>
> **Without infringing copyright, nonprofit libraries and other Section 108 libraries, on behalf of their clientele, should be able:**
>
> - to use electronic technologies to preserve copyrighted materials in their collections;
> - to provide copyrighted materials as part of electronic reserve room service;
> - to provide copyrighted materials as part of electronic interlibrary loan service; and
> - to avoid liability, after posting appropriate copyright notices, for the unsupervised actions of their users.
>
> **Users, libraries, and educational institutions have a right to expect:**
>
> - that the terms of licenses will not restrict fair use or other lawful library or educational uses;
> - that U.S. government works and other public domain materials will be readily available without restrictions and at a government price not exceeding the marginal cost of dissemination; and
> - that rights of use for nonprofit education apply in face-to-face teaching and in transmittal or broadcast to remote locations where educational institutions of the future must increasingly reach their students.

The premise of this "users' bill of rights" statement is that the benefits of new technology shouldn't be arrogated solely to publishers. When new technology makes it easier for libraries to perform what have, after all, always been their core functions, they should be able to do so. Technology shouldn't be an excuse to shift the balance that American copyright law has always struck, to tilt the law towards publishers and away from libraries and users.

The White Paper's approach, though, doesn't talk about balance: indeed, it suggests that calls for enhanced public access to copyrighted materials are thinly disguised attempts to tax copyright owners — and only copyright owners — to achieve goals society seems unwilling to subsidize [11]. If libraries can't get away with stealing the chairs and tables and bookshelves they use, if they have to pay for electricity, why should copyright owners be expected to permit libraries or anyone else to use their valuable intellectual property for free?

The bulk of the Report is a long (and I would argue, distorted) description of current American copyright law that suggests that, if properly interpreted, the law already makes common usage of digital media illegal [12]. Most fundamentally, the Report argues, using a computer to look at or read a document is potentially copyright infringment, because a copy of the document is made in the random access memory (RAM) of the computer [13]. Each time a member of the public reads a work that has been reduced to digital form, the use of a computer would create a copyright event; every act of reading or viewing would involve an actionable reproduction. Once we understand that this is how the law already treats things, the White Paper tells us, there's no need to amend it except to make small changes at the edges; nail things down, as it were.

The Legislative Agenda

The most important of those small changes, which is contained in bills currently pending in both the U.S. House and Senate, would give copyright owners a new right to "transmit" copyrighted works [14]. That way, even if it turns out that reading a document doesn't violate the reproduction right, any remote transmission of a document, from one computer to another, without the copyright owner's permission, will violate the copyright law.

Let me translate that: the Working Group's response to the possibilities I outlined at the beginning is "don't even try." Libraries can use digital technology for limited preservation purposes, but not for document delivery. Don't try to loan one of your digital preservation copies to a patron, for instance, or make it available for in-library browsing at the computer you've set up next to your reference desk. Indeed, things that I would argue are ambiguously legal uses of the technology today would be illegal under the interpretation of copyright law that's laid out, in excruciating detail, in the White Paper. No first sale doctrine in the digital environment — you can't lend works electronically, period. No rights for you or your patrons to browse electronic documents even if the library owns lawful copies. Even though technology makes it possible for you to perform library services for people who don't or can't physically enter the library, it is and should be illegal to do that unless you have first purchased a license from the owner of the copyright of every work you want to make available to remote users.

This Report came out of the Task Force last summer, and implementing legislation was introduced in both houses of Congress immediately by sponsors from both parties. The Patent Commissioner then took the gist of the White Paper to Geneva (the headquarters of the World Intellectual Property Organization), and proposed it as the basis for a new copyright treaty that everyone in the world could sign on to. Initially, the idea was that Congress would pass the bills this past spring, the World Intellectual Property Organization would get this new treaty all ready to be signed by the end of 1996, and then we could all march off into the digital future with our copyrights secure. A second piece of the game plan, which has been pushed in Geneva and introduced in Congress in a free-standing bill, would "solve" the pesky problem that copyright has never protected the factual data contained in databases, by establishing a new species of intellectual property protection that would prohibit the extraction of data [15]. All of these copyright "improvements" got put on the fast track on the ground that they were essentially uncontroversial, and nobody important opposed them.

The thing is, libraries and their associations are important. I've spent most of my years in law teaching as a copyright legislative historian, and one of things that has fascinated me is what causes some bills to pass and others to get stuck. Copyright bills pass when deals get made that persuade all sizable interest groups that they can live with the legislation; bills get stuck, sometimes for years, if an interest group of any appreciable importance remain unwilling to sign off on it. If the various American library groups stick together in opposition to the proposals, and don't cave in, I believe that these bills cannot pass. Congress (and copyright owners) are used to library groups settling for crumbs, so it may take some time for them to figure out that libraries won't back down this time, but if they don't back down, I believe these bills are history.

A New Coalition

So far, that strategy has been working. Library groups joined forces with consumer electronics manufacturers, software and computer companies, communications companies, teachers, Internet civil liberties groups, online service providers, consumer protection organizations and writers, and formed an *ad hoc* organization to try to slow this juggernaut down, and introduce some balance into its provisions. That organization is named the Digital Future Coalition. It testified before the U.S. Senate and submitted written testimony to the U.S. House. It proposed a series of amendments to the pending legislation. It has its very own World Wide Web site at http://www.dfc.org/dfc/.

The Digital Future Coalition deserves substantial credit for helping to make sure that the legislation didn't pass Congress this spring, and probably won't pass Congress this year. It is much harder to influence developments in Geneva, but the Digital Future Coalition is certainly trying to make sure that the White Paper proposal doesn't become a binding treaty without further debate and modification. That effort is ongoing. I don't want to paint the Digital Future Coalition as a knight riding in on a white horse — the Coalition brings together a lot of very different interests all of whom found the vision of copyright law embodied in the White Paper and in the pending legislation threatening. The uncommon nature of the alliance attracted a lot of attention, and that gave the Coalition some leverage to challenge the proposals on the table. It has turned out to be one effective tool in an effort to meet the very specific threat that Congress would enact unwise legislation before anyone had a serious chance to consider its implications.

New Models -- and Old Ones

But, once we've dealt with the current specific threat, we won't be done. We need to figure out a way to assuage the fears of copyright owners, and give them the ability to exploit their works in digital media, while not hamstringing the public's access to information, both in libraries and from their homes. That means we need to think pretty creatively about new models for copyright, and it means that people — in general — need to understand a lot more than they have about how current copyright law works. Copyright specialists have invested a great deal of time and energy in becoming expert in the complicated and arcane ways of the extant copyright law. They can, understandably, be resistant to challenges to the old models for doing business. They may be tempted to dismiss calls for change that come from those who are not adept in the ways of copyright, as proceeding from misunderstandings about the way the current system is intended to work or the goals it ought to advance. But it is important that the essentials of the law be considered in a wider forum that the periodic conventions of copyright specialists. We cannot afford to let this debate on our copyright policy (and our information policy) remain between lawyers for copyright owners and lawyers for VCR and computer manufacturers and lawyers for libraries and educational groups. We as a society can't afford to allow copyright owners to grab up broad rights merely by claiming to have owned them all along.

I have a two-year old at home, and he has been teaching me to think about property rights from a different perspective. When my son wants to eat an apple, he says "I want my apple." When he wants an apple so that he can throw it on the floor, he says, "I want my apple." When he wants the apple that I'm eating, he says "I want my apple." When he wants the apple some stranger is eating, he says "I want my apple." He didn't make the apple, or grow the apple, or even buy the apple, but he wants the apple, and that makes it his apple. And, when he doesn't get "his" apple, he can get pretty upset — he's two years old, after all. So, when it isn't really inconvenient, I am probably more likely to give him an apple than to explain why it really isn't his apple at all. In the short term, that buys me a large hunk of peace, but it isn't really a viable long-term strategy: last week, we were walking down the street when he saw somebody's brand new, shiny, red Toyota parked at the curb and insisted "I want my car!"

The copyright owner groups lined up in support of the White Paper proposal to make the Internet safe for current copyright owners have been reminding me of my son, lately. There's this Internet out there, and it's scary, because it threatens them with loss of control over their products. And, because they're frightened, they want a lot of reassurance in the form of new rights to control other people's uses of their works, and their strategy for getting them is to insist that they are, already, their rights. It's a lot of trouble to explain and explain and explain that the rights they want are not and have never been their rights. It's a whole lot of trouble to be on the receiving end of the kinds of tantrums they can throw: they can send menacing letters from lawyers; they can

threaten to drag folks into court. But, if every time they insist that some legal right they'd like to have is "their" property already, we just hand it over, then we shouldn't really be too surprised if they act like two-year olds every time they want something that they aren't entitled to.

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Notes

>his paper is based on a speech given as part of the Library and Information Technology Association (LITA) President's Program entitled, "Access denied? Effects of censorship, copyright, and the network culture on electronic access to information." It was moderated by LITA President Michele Newberry at the July, 1996 annual American Library Association Conference in New York City.

1. Howard Wayne Oliver, Executive Secretary of AFTRA (American Federation of Television and Radio Artists) told the U.S. House Subcommittee:

> "Unless we do something to ensure that the creators of the material are not exploited by the electronics revolution, that same revolution which will make it possible for almost every household to have an audio and video recorder will surely undermine, cripple, and eventually wash away the very industries on which it feeds and which provide employment for thousands of our citizens."

Home Recording of Copyrighted Works: Hearings on H.R. 4783, H.R. 4794, H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705 Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 97th Cong. 2d Sess. 142 (1982).

2. Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 143. See *ACLU v. Reno*, No. 96–963 (E.D. Pa. 6/12/96).

3. I refer here to my colleagues at the Creative Incentive Coalition [or CIC], Information Industry Association, ASCAP and BMI, Association of American Publishers,, Software Publishers Association, and Motion Picture Association of America.

4. Information Infrastructure Task Force, *Intellectual property and the National Information Infrastructure: The report of the Working Group on Intellectual Property Rights*. Washington, D.C., 1995 [hereinafter referred to as the White Paper]. See http://www.uspto.gov/web/ipnii/.

5. See S. 1284, 104th Cong., 1st Sess. (1995); H.R. 2441, 104th Cong., 1st Sess.(1995).

6. See, *e.g.*, Intellectual Property Issues Involved in the National Information Infrastructure Initiative: Public Hearing Before the National Information Infrastructure Task Force Working Group on Intellectual Property, Nov. 18, 1993 at 58 (testimony of Robert L. Oakley, for the American Association of Law Libraries, Association of Research Libraries, American Library Association, Medical Library Association, Association of Academic Health Science Library Directors, Special Libraries Associations, Association of American Universities, National Association of State Universities and Land Grant Colleges, Coalition for Network Information, EDUCOM, CAUSE, and the National Coordination Committee for the Promotion of History).

7. See, *e.g.*, Association of Research Libraries, "Detailed comments on *Intellectual property and the National Information Infrastructure*: A preliminary draft," URL: gopher://arl.cni.org:70/00/scomm/copyright/nii/admin/detail; American Library Association and Association of Research Libraries, "Reply comments on *Intellectual property and the National Information Infrastructure:* A

preliminary draft of the report of the Working Group on Intellectual Property Rights" (Oct. 21, 1994), URL: gopher://arl.cni.org:70/00/scomm/copyright/nii/admin/ala.

8. See Information Infrastructure Task Force, *Intellectual property and the National Information Infrastructure: A preliminary draft of the report of the Working Group on Intellectual Property Rights* (July 7, 1994). Washington, D.C., 1994, also known as the Green Paper.

9. See public hearing at Andrew Mellon Auditorium [Washington, D.C.] Before the Information Infrastructure Task Force Working Group on Intellectual Property Rights, September 22, 1994 at 62–64 (testimony of Lucretia McClure for the Medical Library Association and the Association of Academic Health Science Library Directors); Public hearing at the University of Chicago before the Information Infrastructure Task Force Working Group on Intellectual Property Rights, September 14, 1994, at 5–9 (testimony of Edward J. Valauskas for the American Library Association); Public hearing at University of California Los Angeles before the Information Infrastructure Task Force Working Group on Intellectual Property, September 16, 1994, at 32–36 (testimony of Gloria Werner for the Association of Research Libraries).

10. The Association of Research Libraries, American Association of Law Libraries, American Library Association, Association of Academic Health Sciences Library Directors, Medical Library Association, Special Libraries Association and Art Libraries Society of North America, *Fair use in the electronic age: Serving the public interest* (Jan 18, 1995), available at URL: http://arl.cni.org/scomm/copyright/uses.html.

11. See White Paper, supra note 4, at 84.

12. See Jessica Litman, "Revising copyright law for the information age," 75 *Oregon L. Rev.* 19 (1996).

13. See White Paper, supra note 4, at 64–66. Copyright has always given copyright owners an exclusive reproduction right; it has never before now given them an exclusive reading right — and it is difficult to argue that Congress intended to enact a law giving copyright owners control of reading. The argument that it can be so interpreted relies on a Ninth Circuit case decided a couple of years ago, involving a fairly ugly dispute involving a computer lease. The court ruled that it was copyright infringment for an unauthorized third party service provider to so much as turn one of the leased computers on, because turning the machine on caused the operating system program to boot into RAM, and booting the program into RAM created an unauthorized reproduction. See *MAI Systems Corp v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993). The legislative history of the copyright law indicates that that the court misread the statute, see H.R. Rep. No. 1476, 94th Cong., 2d Sess. 52–53, 62 (1976), and the case has attracted widespread criticism. See, *e.g.*, Pamela Samuelson, "Legally speaking: The NII Intellectual Property report," 37 *Communications of the ACM*, December 1994, at 12; James Boyle, "The debate on the White Paper," URL: http://www.harvnet.harvard.edu/online/moreinfo/boyledeb.html (also available at URL: http://www.clark.net/pub/rothman/boyle.htm). In the past few years, however, a couple of courts have followed the *MAI Systems* case, and no court has expressly repudiated it. See *Triad Systems Corp. v. Southeastern Express Co.*, 1994 U.S. Dist. LEXIS 5390 (N.D. Cal.), aff'd in relevant part, 1995 U.S. App. LEXIS 24426 (9th Cir.),cert. denied, 116 S. Ct. 1015 (1996); *Advanced Computer Services v. MAI Systems Corp.*, 845 F. Supp. 356 (E.D.Va1994). In any event, the White Paper seized on this case, called it well-settled law, and then generalized from it to create what is, in essence, an exclusive reading right for works in digital form.

14. See S. 1284, 104th Cong., 1st Sess. (1995).

15. H.R. 3531, 104th Congress; 2nd Session (May 23, 1996), makes it illegal to "extract, use or reuse" any substantial portion of the contents of a database, or to engage in "repeated or systematic extraction, use or reuse of insubstantial parts" of a database. The bill covers both electronic databases and conventional databases, since database is defined to include any collection of data in a systematic arrangement. There is a requirement that the database proprietor sustain economic damage to recover, but the actionable damage is defined broadly to include using or conveying data in any situation in which the database proprietor has a demonstrable interest in licensing the use. The repeated reference to the 1996 *World Almanac* by the "Ready Reference" desk of a city library in response to telephone inquiries would appear to come within the prohibitions of the bill.

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