

NATIONAL COMMISSION ON NEW TECHNOLOGICAL
USES OF COPYRIGHTED WORKS

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DEPOSITORY

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

NATIONAL COMMISSION ON TECHNOLOGICAL USES
OF COPYRIGHTED WORKS

MARCH 17, 1977

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NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

THURSDAY, MARCH 17, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 in room 2226, Rayburn House Office Building, the Honorable Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Danielson, Ertel, and Railsback.

Also present: Bruce A. Lehman, counsel, and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will come to order. We are pleased to have with us this morning Prof. Arthur R. Miller and also Arthur J. Levine. Mr. Levine is the executive director of the National Commission on New Technological Uses of Copyrighted Works.

You may proceed as you wish.

TESTIMONY OF ARTHUR J. LEVINE, EXECUTIVE DIRECTOR, NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS; ACCOMPANIED BY PROF. ARTHUR R. MILLER, PROFESSOR OF LAW, HARVARD UNIVERSITY

Mr. LEVINE. I am pleased to appear before the subcommittee again to discuss the progress and activities of the National Commission on New Technological Uses of Copyrighted Works (CONTU) and to request on behalf of the Commissioners the enactment of H.R. 4836.

When Public Law 93-573 was signed on December 31, 1974, the establishment of CONTU was authorized as a part of the total effort to bring the copyright laws of the United States into line with the information age. Briefly the purpose of CONTU was stated to be:

. . . to study and compile data on: (1) the reproduction and use of copyrighted works of authorship, (A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and (B) by various forms of machine reproduction not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and (2) the creation of new works by the application or intervention of such automatic systems of machine reproduction.

The Congress, in this legislation, contemplated that 3 years would be required to carry out these tasks with the final report of the Commission to be submitted no later than December 31, 1977. As you may know, the Commissioners were not appointed by the President until July 25, 1975, and the first meeting was held on October 8, 1975, more than 9 months after the enabling legislation was signed. In accordance with the statute, CONTU undertook a program leading to the development of recommendations to the Congress and the President on changes in copyright law and procedures. The preliminary report required by the statute was delivered 1 year after the first meeting and summarized the activities of CONTU up to that date.

CONTU has responsibilities under the law in two distinct but interrelated areas, computer uses of copyrighted works and photocopying.

In the computer area activities have been centered on: (1) the nature and extent of copyright protection for computer software; (2) the ways in which copyright should apply to the uses of conventional works of authorship in computer systems; (3) how copyright principles should be developed to deal with computer data bases; and (4) the nature and extent of copyright protection for works of authorship created with the aid or intervention of computer systems.

In the photocopying area the Commission has directed its activities toward assembling data on the volume and nature of photocopying. It is studying methods for the licensing and supplying of authorized copies and will make recommendations on how the copyright law should be framed to take into account new methods of machine reproduction for the generation, dissemination, and use of copyrighted works of authorship. In all of these computer and photocopying areas the Commission is aware that its ultimate recommendations may significantly influence the ways in which these new technologies may be used to benefit society.

We are dealing with the applications of new technologies which are at once mundane and also at the cutting edge of technological development ranging from the ubiquitous photocopying machine to the application of techniques, such as artificial intelligence, for enhancing human creativity through uses of computers.

The complex nature of these technologies required that the Commission devote a substantial portion of its early meetings to an educational process on these new methods of information transfer. At one of these early meetings, the Commissioners decided to give first consideration to the computer questions and to defer their study of photocopying matters until after enactment of the copyright revision bill.

The staff developed a plan to bring before the Commission experts on computer and information systems to explain the technological, economic, and policy factors involved in the application of these systems to the generation, dissemination and use of works of intellectual creativity. Extensive hearings were held on the very difficult question of the protection of computer programs followed by hearings on computerized data bases, new works of authorship created by the application or intervention of computers and the use of copyrighted works in computer systems.

At the April 1976, meeting the Commission offered its good offices to the Congress to assist the interested parties in developing guidelines on photocopying in lieu of interlibrary loan under the statutory provisions of section 108(g)(2) of the revision bill. After several months of drafts, redrafts, and at times spirited negotiations by CONTU, the library, publisher and author associations finally reached agreement on guidelines. These guidelines were considered a significant achievement by the affected parties and were incorporated in the conference report accompanying section 22.

To aid in the systematic analysis of the issues before the Commission and to assure that policy options are fully explored and developed, the Chairman, Judge Stanley H. Fuld, has designated four subcommittees to concentrate on the substantive areas of Commission responsibility.

The Software Subcommittee is responsible for recommending to the Commission how and whether the copyright law should protect computer programs.

The Data Base Subcommittee has been assigned the task of recommending to the Commission the applicability of copyright to conventional works of authorship used in computer systems and to data bases which are used in conjunction with automated information systems.

The New Works Subcommittee deals with the issues raised by the use of the new technologies in the creation of works of authorship.

The Photocopying Subcommittee is studying the long range impact of various methods and systems of machine duplication of copyrighted works and how this will affect copyright industries and consumers of copyrighted works in the future.

To aid these subcommittees in their work the Commission has arranged for the collection and analysis of data needed to assess the public policy implications of developments in these areas. Briefly these studies include:

An economic analysis of the application of copyright to computer programs and data bases.

A statistical survey to define the characteristics of the computer software industry and to analyze the impact of proprietary rights on technological growth.

A data collection project to analyze the volume and nature of photocopying in libraries which may require licensing or authorization and the design of possible clearinghouse or payment mechanisms.

A survey of present practices and attitudes of publishers with respect to Authorized photocopying, supplying of authorized copies and licensing of photocopying.

A computer model analyzing the relative costs of subscribing to periodicals against obtaining copies of articles through interlibrary loan.

A study analyzing the impact on the consumer of any changes in the copyright law in areas of the Commission's responsibility, with special emphasis on potential economic consequences.

The results of these studies will provide much of the basic data which the Commission needs to further analyze the policy implica-

tions of its recommendations. The time frame for the completion of these studies extends into August 1977.

At the hearing of this subcommittee on February 23, 1976, Chairman Kastenmeier asked if the Commission had encountered difficulties which might prevent the delivery of its final report within the statutory period. Based on the best estimates at that time, I replied that although there had been a 7-month delay in appointing the Commission members, it was the intent of the Commission to complete its report by December 31, 1977. During this past year the Commission has encountered delays in assembling and analyzing data which was not previously available, and has undertaken additional tasks, such as the work on the photocopying guidelines.

In addition, the complexity of the technologies required a substantial amount of time be devoted to educational effort. The additional 7 months which the Commission has requested will provide sufficient time to publish a draft final report, upon which it will hold extensive hearings before publishing its final report. The data collection and analysis studies which have been undertaken will not be completed in sufficient time to be considered for inclusion in a draft report under the time limits now in effect. The Commission believes that for these reasons the original time estimated, a full 3 years of active life, will be necessary, and urges the passage of H.R. 4836.

Our budget projections indicate that the total cost for the Commission with the extension will be approximately equal to the originally projected cost. And when I say "originally projected cost," I mean last year's projected cost. Originally the projected cost to complete the work of CONTU was \$2,461,400. The projected cost last year was \$1,267,000. With the additional 7 months the projected cost will be \$1,534,000. But as I stated earlier I believe that we will be able to, perhaps, stay within the original projected budget of last year.

This conclusion is based on the fact that the Commission had unexpended funds of \$105,000 in fiscal 1976. Our projections indicate that in fiscal 1977 there may possibly be a turn back of a like amount. The additional appropriation required to fund the Commission through the extension period is \$270,000 over the currently requested 5 month 1978 funding level of \$248,500.

When the unexpended funds for fiscal 1976 and 1977 are added together the total cost for the requested extension of time will be minimal.

I should add that it would be my hope to continue operating the activities of the Commission so that by the end of the Commission's work we are able to stay within the budget that was contemplated in last year's hearing.

This concludes my presentation, Mr. Chairman. I will be happy to answer any questions which you may have after Professor Miller's statement.

Mr. KASTENMEIER. Thank you Mr. Levine.

Mr. Miller.

Mr. MILLER. My name is Arthur R. Miller. I am a professor of law at Harvard University and I was appointed by the President on July 25, 1975, to be one of the four user members of the National Commission on New Technological Uses of Copyrighted Works.

A short statement by me has been prepared for the subcommittee. I much prefer, however, to simply extemporize a few thoughts on why I believe H.R. 4836 should receive your favorable consideration.

At the risk of being autobiographical I had a very special interest in appearing before you this morning that goes beyond my membership on the Commission. In the mid-1960's I believe I was the first, or one of the first witnesses, before the Senate subcommittee considering the then copyright revision bill to suggest to the Congress and urge the Congress not to legislate on the computer issue because of the vast uncertainty concerning new technology and the vast uncertainty as to the way copyright and computer technology might interact. At that time I urged a moratorium, and I also urged the establishment of a study commission. After much debate the Congress apparently agreed with those recommendations and wisely established CONTU, and wisely, I think, put in section 117 of the act creating the moratorium relating to computer utilization of copyrighted works.

I believed then, and I believe now, that this is one of the most significant copyright problems facing this committee, this Congress, and the Nation for the next 30 or 40 years. These new technologies that we call the computer, when added to photocopying technology really represent the brave new world of information delivery and information dissemination. We cannot afford legislative mistakes. The life cycle for copyright legislation in this country is such that we can be concerned about the ability to correct legislative mistakes.

The primary function of CONTU is to deliver to the Congress a complete history and legislative base to make decisions concerning how best to fill the gaps in the current statute concerning computer utilization and photocopying. This is a real problem.

The current statute has holes in it. It has a hole created by the moratorium, and it has in effect a holding action on the photocopying question. CONTU must do its job well to enable Congress to do its job well. We are working very hard. We meet every month. It is rare that more than one or two of the 12 commissioners miss a meeting. We have been operating diligently. The staff has been operating diligently.

As already indicated, we lost 9 months because of late appointment. Our attention was diverted on the 108(g)(2) issue for an additional 3 or 4 months. In addition, we have discovered that the technological problems are far more complex than any of us had imagined, even though some of us on the Commission have familiarity with the technology. It turns out that the very name "software" is a misnomer. With the new technologies and the development in microminiaturization, chip technology, and wired computers, it has taken us months to figure out "what the size of the elephant is" when we are talking about software and software protection.

None of us realized that when we play T.V. games like "Odyssey" or "Telstar" that we were dealing with software in the form of a "chip", a chip far different from a pack of computer punch cards or magnetic tapes. And yet we have to present proposals to Congress for the protection and the balancing of interests with regard to chip, wired computers, magnetic tapes, discs, and a whole host of computer technologies coming along.

We also did not realize that we are not writing on a clean slate. There is immense information that we have to wade through to do our job well. Our witness list has swelled. Our documentation has grown. We have been obliged to educate ourselves and do more work than we thought we would ever have to do.

There is no way we can present the Congress with a fully developed report than has been tested in the market place of the constituencies by December 31, 1977. At best at this point, given the delay, we can draft a report prepared this summer or early fall. But there is no way to get effective feedback, not simply from the computer technology groups, or the photocopying groups, or the user groups, but from the consumer groups that finally have begun to show an interest in this subject matter.

The Commission voted unanimously to ask for this extension. We are 12 people who are working hard. We are 12 people who represented very different constituencies. In effect, all of the groups interested in the photocopying and computer problems are asking for this extension in order to present the Congress with workable, effective, complete, and usable data.

I thank you.

Mr. KASTENMEIER. Thank you, Professor Miller.

Without objection, the complete text of the testimony of both witnesses will be made a part of the record.

[The prepared statements of Professor Miller and Mr. Levine follow:]

STATEMENT OF ARTHUR R. MILLER, PROFESSOR OF LAW, HARVARD UNIVERSITY

My name is Arthur R. Miller and I am a Professor of Law at Harvard University and was appointed by the President on July 25, 1975 as a member of the National Commission on New Technological Uses of Copyrighted Works. I am one of the four members of the Commission representing users of copyrighted materials.

I must confess to a special interest in the work of this Commission since I believe that I played some part in the legislative process by which it came into being. During the mid-1960s, as Vice President of EDUCOM (The Interuniversity Education Council), I participated in the hearings on the then pending copyright revision bill, and urged Congress to place a moratorium on the possible infringement of copyrighted material when used in conjunction with automatic systems capable of storing, processing, retrieving and transferring information—computers. It was my opinion at that time that the development of computer technology to aid in the dissemination of information would be impeded and potentially wrong legislative decisions might be made if such a moratorium were not imposed. Not surprisingly, author and publisher organizations viewed the advancing technology as a threat to their property rights and they opposed any moratorium.

The Congress believed that the issues identified by myself and my colleagues and by copyright proprietors raised serious questions that required further analysis and study outside of the highly charged copyright revision effort. Accordingly, this Subcommittee and its counterpart in the Senate amended the then pending revision bills by adding Section 117, which, in effect, states that the law concerning the use of copyrighted material in computers as developed by statute or by the courts on the effective date of the new law will continue to govern the use of copyrighted material in computers. In other words, Congress chose not to legislate in this emerging area of law and technology until a proper study was completed. Title II of the bill provided for the establishment of a Commission to study the computer and photocopying issues and make recommendations for any necessary changes in copyright law and procedure.

I was honored to be selected by the President to serve on this commission. Throughout my seventeen months of service on the Commission, I have been constantly impressed with the dedication and hard work of Chairman Stanley H. Fuld, Vice Chairman Melville B. Nimmer, my fellow Commissioners, and the Commission staff. The interest and seriousness with which my fellow Commis-

sioners approach their responsibility is extraordinary. It is most unusual for more than one or two of the twelve appointed Commissioners to miss a Commission meeting.

The task which first confronted the Commission was to familiarize ourselves with the existing technologies. Although a few of the Commissioners had some knowledge of the capabilities of the computer in disseminating information, it was clear that in order to appreciate the scope and potential of the new computer technology fully, extended presentations of factual data on computer technology and use was necessary. We have now reached the point where witnesses who are highly sophisticated in computer technology are able to communicate to the Commissioners effectively the viewpoints of the organizations and associations which they represent.

As a result of the hard work put forth by the Commissioners, we have become aware of the complexities of the issues which face us. We have determined that in order to discharge our responsibilities we must study and analyze the full range of potential public policy implications of the recommendations which we may ultimately develop. The studies that we have commissioned and the further testimony that we expect to hear will require a continued high level of participation and hard work by my fellow Commissioners. We will need in the coming months to put in as much concentrated effort as we did for an extended period in the spring and summer of 1976 in working with the interested parties in producing the guidelines for library photocopying, which the Conference Committee accepted as an interpretation of §108(g)(2) of the Revision Bill.

The Commission at its January meeting voted unanimously to request this extension of time for filing its final report. On behalf of the Commission, I would strongly urge that we be allowed sufficient time to study the issues, analyze the data and produce a final report which reflects our best efforts and will be valuable to the Congress in dealing with the problems assigned to us.

STATEMENT OF ARTHUR J. LEVINE, EXECUTIVE DIRECTOR, NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

I am pleased to appear before the Subcommittee again to discuss the progress and activities of the National Commission on New Technological Uses of Copyrighted Works (CONTU) and to request on behalf of the Commissioners the enactment of H. R. 4836.

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3. How copyright principles should be developed to deal with computer data bases; and

4. The nature and extent of copyright protection for works of authorship created with the aid or intervention of computer systems.

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The complex nature of these technologies required that the Commission devote a substantial portion of its early meetings to an educational process on these new methods of information transfer. At one of these early meetings, the Commissioners decided to give first consideration to the computer questions and to defer their study of photocopying matters until after enactment of the copyright revision bill. The staff developed a plan to bring before the Commission experts on computer and information systems to explain the technological, economic, and policy factors involved in the application of these systems to the generation, dissemination and use of works of intellectual creativity. Extensive hearings were held on the very difficult question of the protection of computer programs followed by hearings on computerized data bases, new works of authorship created by the application or intervention of computers and the use of copyrighted works in computer systems.

LIBRARY PHOTOCOPYING GUIDELINES

At the April 1976 meeting the Commission offered its good offices to the Congress to assist the interested parties in developing guidelines on photocopying in lieu of interlibrary loan under the statutory provisions of § 108(g)(2) of the revision bill. After several months of drafts, redrafts, and at times spirited negotiation by CONTU, the library, publisher and author associations finally reached agreements on guidelines. These guidelines were considered a significant achievement by the affected parties and incorporated in the Conference Report accompanying S. 22.

To aid in the systematic analysis of the issues before it and to assure that policy options are fully explored and developed, the Chairman, Judge Stanley H. Fuld, has designated four Subcommittees to concentrate on the substantive areas of Commission responsibility.

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The Photocopying Subcommittee is studying the long range impact of various methods and systems of machine duplication of copyrighted works and how this will affect copyright industries and consumers of copyrighted works in the future.

To aid these Subcommittees in their work the Commission has arranged for the collection and analysis of data needed to assess the public policy implications of developments in these areas. Briefly these studies include:

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A statistical survey to define the characteristics of the computer software industry and to analyze the impact of proprietary rights on technological growth.

A data collection project to analyze the volume and nature of photocopying in libraries which may require licensing or authorization and the design of possible clearinghouse or payment mechanisms.

A survey of present practices and attitudes of publishers with respect to authorized photocopying, supplying of authorized copies and licensing of photocopying.

A computer model analyzing the relative costs of subscribing to periodicals versus obtaining copies of articles through interlibrary loan.

A study analyzing the impact on the consumer of any changes in the copyright law in areas of the Commission's responsibility, with special emphasis on potential economic consequences.

The results of these studies will provide much of the basic data which the Commission needs to further analyze the policy implication of its recommendations. The time frame for the completion of these studies extends into August of 1977.

NEED FOR RESTORATION OF TIME

At the hearings of this Subcommittee on February 23, 1976, Chairman Kastenmeier asked if the Commission had encountered difficulties which might prevent the delivery of its final report within the statutory period. Based on the best estimates at that time, I replied that although there had been a seven month delay in appointing the Commission members, it was the intent of the Commission to complete its report by December 31, 1977. During this past year the Commission has encountered delays in assembling and analyzing data which was not previously available, and undertaken additional tasks, such as the work on the photocopying guidelines.

In addition, the complexity of the technologies required that a substantial amount of time be devoted to educational effort. The additional seven months which the Commission has requested will provide sufficient time to publish a draft final report, upon which it will hold extensive hearings before publishing its final report. The data collection and analysis studies which have been undertaken will not be completed in sufficient time to be considered for inclusion in a draft report under the time limits now in effect. The Commission believes that for these reasons the original time estimated, a full three years of active life, will be necessary, and urges the passage of H. R. 4836.

Our budget projections indicate that the total cost for the Commission with the extension will be approximately equal to the originally projected cost. This conclusion is based on the fact that the Commission had unexpended funds of \$105,000 in fiscal 1976. Our projections indicate that in fiscal 1977 there may possibly be a turn back of a like amount. The additional appropriation required to fund the Commission through the extension period is \$270,000 over the currently requested five month 1978 funding level of \$248,500. When the unexpended funds for fiscal 1976 and 1977 are added together the total cost for the requested extension of time will be minimal.

This concludes my presentation. I will be happy to answer any questions which you may have.

Mr. KASTENMEIER. You reported that the 3-year cost will be \$2,461,400. Your experience is that you have been spending at a rate less than that?

Mr. LEVINE. Yes; when CONTU first came before the Congress in the hearings in November 1974, and in the report of the Judiciary Committee on December 12, 1974, the funding level at that time was \$2,461,400. I was not involved with CONTU at that time, but I believe at that point you asked whether it would be possible to come in with a lower estimate. We then came in with a budget of \$1,267,000. With the extension, the budget would be \$1,534,000. But of that \$1,534,000 we have already given back \$105,000 which brings us to \$1,429,000. And I am hopeful that we will be able to stick within the \$1,267,000 range as I testified.

Mr. KASTENMEIER. Have you any reservations at all in suggesting that an additional 7 months will be sufficient for your task. The reason I ask is that it is difficult each time the committee asks to grant an extension of a commission. I think that it can be justified in this case. However, should it come to pass that an additional extension is sought, it would be much more difficult to persuade the Congress again.

Mr. LEVINE. I understand that, Mr. Kastenmeier. The sense of the Commission is that we will be able to complete our work by that date. One cannot be sure that some new technology, some new, strange technology will not come down the road and change everything that we have been doing. But we have had the best of technological experts, and they don't see that coming within the next 5 years.

So, I think that it is the Commission's opinion that 7 months would be sufficient and that we will get our report in by that time.

Mr. MILLER. Mr. Chairman, the Commission really anguished over whether to ask for the extension, because we all felt that if it could be done, we should try to do it. I would simply second Mr. Levine's point. At the rate which we are working we should be done; and probably the only wild card in the deck is the outside contractors and whether they will meet their schedules in delivering reports to us. If they do, I believe we can meet the schedule.

Mr. KASTENMEIER. Yes; I suggest to you that this may not be difficult to get, namely, a 7-months extension. But a subsequent extension would be very difficult. And therefore, I would urge the Commission to proceed on the basis the option of a further extension doesn't really remain open to them.

Mr. LEVINE. I think the Commission realizes that, Mr. Chairman.

Mr. KASTENMEIER. I would like to ask Professor Miller a couple of questions. Professor Miller you indicated that although you are quite acquainted with the field, nonetheless, you determined that there was even a higher degree of complexity than you had assumed at the outset. Will it not be necessary, in your view, for the Congress, the subcommittee, and others in order to obtain the benefits from the Commission's conclusions and to learn essentially the same elements that you have had to grapple with in terms of what the technology. We cannot learn vicariously through you if we are going to act on it for legislative purposes?

Mr. MILLER. What we would hope, Mr. Chairman, is that we can present you with a report that will distill a great deal of this technological information and present it to you in an organized fashion so that it can be dealt with thematically.

I think one of the biggest difficulties we have had is getting a view of the universe so that we can then synthesize it and organize it to identify basic principles for reaching accommodations between, proprietors and users.

The answer to your question is "yes," I think it will happen. You will have to reinvent the wheel, but I think we can make it a much easier job for you simply by organizing or giving you, in effect, a driver's manual which we didn't have when we began. One does discover patterns as one looks at these various and seemingly vastly different technologies. You discover patterns, and then you start discovering that there are principles that you can apply to these patterns. And hopefully, that is what we can assist the Congress in doing.

Mr. KASTENMEIER. One last question, Professor Miller. You indicate that you, as a Commissioner, are representing users. Is there a discernible pattern among the Commissioners as far as users and proprietors of copyrighted materials are concerned?

Mr. MILLER. I smile, Mr. Chairman, because the only time that I ever remember that I was appointed as a user is when Mr. Levine reminds me, because I happen to be an author of over 25 books and therefore consider myself a proprietor and vitally interested in the royalty structure.

Mr. KASTENMEIER. The reason I say that is because in your own statement you say, "I am one of the four members of the Commission representing the users."

Mr. MILLER. Yes; treat that as a sort of a biographical background. What has happened in the Commission is that most of us really forget from whence we cometh. The librarians and the book publishers and the consumer representatives. There are perspectives voiced, and a great deal of the Commission is a pooling of information. The librarians tell us their problems. The book publishers tell us their problems. But I serve on the software subcommittee with Judge Fuld and E. Gabriel Perle, a vice president of Time, Inc., and I can report on my experience. In that subcommittee we have come to a conclusion unanimously, based on our pooled information. There is really no acrimony in full commission meetings. There might have been a little role playing at the beginning while everybody was sort of "fencing off the turf." But at this point it is a very self-cohesive unit that has reached a stable and common level of understanding.

I think we are reasonably likely to come up with recommendations that will not carry sharp divisions.

Mr. KASTENMEIER. Thank you.

Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman. Thank you, gentlemen, for your testimony.

In your statement—I believe it was you, Mr. Levine, you mentioned that you hope to be able to come up with a draft of a final report by this summer, the summer of 1977.

Mr. LEVINE. A little later than that, Mr. Danielson.

Mr. DANIELSON. Could you put an approximate date on that.

Mr. LEVINE. I would hope that we can come up with a draft final report by the end of this year. Some of our contract work will not be completed until then. If my statement says otherwise, then I have misspoken.

The purpose of the draft final report will be to circulate that and then to get as wide a body of opinion on that draft final report as we can possibly get. There is great interest in the work of the Commission. This is just a photocopy of the front page. [Indicating.]

Mr. DANIELSON. But we have a royalty on that Xerox. [Laughter.]

Mr. LEVINE. This is the front page of Computer World this week, and it deals with the work of the Commission, and there is wide interest. [Indicating.]

Mr. DANIELSON. Well, sir, I don't mean to interrupt you, but I am afraid we are going to get a quorum call. I would like to help our chairman, if I can, to get the bill disposed of.

The reason I asked the question—I probably misunderstood this. I doubt that you misspoke. Perhaps by the end of 1977 you will have a draft final report. And you estimate then that about 7 months later, the end of July 1978, you can have the draft final report polished into a final report.

Mr. LEVINE. That is our expectation.

Mr. DANIELSON. Well, I hope you can. And I hope you bear in mind that the Founding Fathers put the Constitution together in a heck of a lot less time than that. So, I truly hope you can.

I am remembering every word you said. I am a little hard of hearing, but I heard every word you said. And I am logging it in my own software, and I shall remember.

I commend you on an effort to set a date. I wish you the very best of luck in reaching it. I will support the bill. But I really think that if you become a little less fascinated with the "nits" and pay some attention to the "gnats" you might get this thing brought to a close.

One of you gentlemen brought up possible new technologies. Please bear in mind I am only a country boy. But I am aware that thank God that there will not be an end to new technologies. So, every time another one comes over the hill, that is not a part of your original charge. Now, let's leave that to a second generation of CONTU's, because we are going to have more and more technologies as time goes by.

The Constitution says that we permit copyright only for the purpose of stimulating interest in the technical masses.

I have no further comments. Thank you, very much.

Mr. LEVINE. Thank you, Mr. Danielson, and I shall carry your message back strongly to the Commission.

Mr. DANIELSON. Make it as strong as you wish.

Mr. KASTENMEIER. The gentleman from Pennsylvania, Mr. Ertel.

Mr. ERTEL. Thank you, gentlemen.

I was not here when this Commission was originally established. So, I am somewhat unfamiliar with how the Commission operates. But I am concerned. I have heard that people are concerned about commissions and the funding of them. Can you assure us that you will not go over the funding limit and not decide to request additional funds for your Commission?

Mr. LEVINE. Mr. Ertel, the appropriation that is now pending would be insufficient to carry us in fiscal year 1978 because it covers only 5 months in fiscal year 1978. We are now talking about 12 months—

Mr. ERTEL. I recognize that you were not in operation for the first 5 to 6 months because of the appointments. Would you be over the original estimate of the Commission?

Mr. LEVINE. It depends upon the original estimate. We are not going to spend—the estimate was \$1,267,000. With the extension it would be \$1,534,000. As I indicated we have already given back to the Government \$105,000 for fiscal year 1976 that we didn't spend.

I hesitate, Mr. Ertel, to commit the Commission to \$1,267,000, but I can assure you that the Commission is not out wildly spending money. The Commissioners are cost conscious, and will continue to be cost conscious. And it is my hope that we will be able to do it for \$1,267,000 or less. But I hesitate at this point to commit the Commission to that figure because I am just not sure.

We will be asking for, in effect, \$1,534,000 over the 3 years. As I say we will spend less than that.

Mr. ERTEL. As I understand it, you will have your draft report by the end of the year? The only thing then you're looking for during that 7 months' extension is public comment.

Mr. LEVINE. That's correct.

Mr. ERTEL. So, the only thing you need is minor revisions and further draft reports?

Mr. LEVINE. It may well be that we may find that our draft report is all wrong and we may have to make major revisions. It is difficult to say now.

Mr. ERTEL. Well, I am on a commission right now where that is happening, and we are rewriting the whole report. I hope you don't get into that problem.

So, then you can really expect to really wrap your full work this year, and next year you're technically in a normal situation?

Mr. LEVINE. Yes. We hope that additional information will be produced by the draft final report. It may require minor revisions. It may bring some people out that we have not yet heard from who have a new approach. But in any case we would have completed our report by July.

Mr. KASTENMEIER. One last question on the line that was suggested by the gentleman from Pennsylvania, Mr. Ertel, and in connection with a comment made by Professor Miller, what extent are you dependent upon contractors delivering certain supporting—

Mr. LEVINE. Our last contract now contemplates August 1977. There has been slippage. But it has not been major slippage up to this point. And everything that we know right now we have monitored in working with contractors. And it doesn't appear that we will be much beyond that point.

Mr. KASTENMEIER. Thank you, Mr. Levine and Professor Miller, for your appearance this morning. I don't think that we will have any difficulty from a committee standpoint with this, and perhaps not on the floor either. And I wish you good luck in the ensuing months, because we do look forward to your work.

I think I reflect the views of my colleagues when I say if it doesn't take you an additional 7 months to complete it, we will be happy to receive the fruit of your work before that time.

Mr. LEVINE. Thank you, Mr. Chairman.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. KASTENMEIER. That concludes the hearing.

[Whereupon, at 12 noon, the hearing was closed.]

ADDITIONAL MATERIAL

95TH CONGRESS
1ST SESSION

H. R. 4836

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1977

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on the Judiciary.

A BILL

To extend by seven months the term of the National Commission on New Technological Uses of Copyrighted Works.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 206 (b) of Public Law 93-573 is amended to
4 read as follows:

5 “(b) On or before July 31, 1978 the Commission shall
6 submit to the President and the Congress a final report on
7 its study and investigation which shall include its recom-
8 mendations and such proposals for legislation and adminis-
9 trative action as may be necessary to carry out its recom-
10 mendations.”.



Public Law 93-573
93rd Congress, S. 3976
December 31, 1974

An Act

88 STAT. 1873

To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Copyrights.

TITLE I—AMEND TITLE 17 UNITED STATES CODE, AND FOR OTHER PURPOSES

SEC. 101. Section 3 of the Act of October 15, 1971 (85 Stat. 391), is amended by striking out "and before January 1, 1975".

17 USC 1
note.

SEC. 102. Section 104 of title 17, United States Code, is amended—

- (1) by striking out "Any person" and inserting in lieu thereof "(a) Except as provided in subsection (b), any person"; and

(2) by adding at the end thereof the following new subsection:

"(b) Any person who willfully and for profit shall infringe any copyright provided by section 1(f) of this title, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than \$25,000 or imprisoned not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense."

Willful in-
fringement,
penalties.

SEC. 103. Section 2318 of title 18, United States Code, is amended by striking out all after "fined" and inserting in lieu thereof "not more than \$25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense."

SEC. 104. In any case in which the renewal term of copyright subsisting in any work on the date of approval of this bill, or the term thereof as extended by Public Law 87-638; by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, by Public Law 91-555, by Public Law 92-170, or by Public Law 92-566 (or by all or certain of said laws), would expire prior to December 31, 1976, such term is hereby continued until December 31, 1976.

Renewal term,
continuation.
17 USC 24
note.

TITLE II—NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

ESTABLISHMENT AND PURPOSE OF COMMISSION

SEC. 201. (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).

17 USC 201
note.

- (b) The purpose of the Commission is to study and compile data on:
- (1) the reproduction and use of copyrighted works of authorship—

(A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and

(B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and

(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

- (c) The Commission shall make recommendations as to such changes

88 STAT. 1874

in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

MEMBERSHIP OF THE COMMISSION

17 USC 201
note.

SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:

(1) Four members, to be appointed by the President, selected from authors and other copyright owners;

(2) Four members, to be appointed by the President, selected from users of copyright works;

(3) Four nongovernmental members to be appointed by the President, selected from the public generally, with at least one member selected from among experts in consumer protection affairs;

(4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

COMPENSATION OF MEMBERS OF COMMISSION

17 USC 201
note.

SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.

STAFF

17 USC 201
note.

SEC. 204. (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the Administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

EXPENSES OF THE COMMISSION

Appropriation.
17 USC 201
note.

SEC. 205. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title until June 30, 1976.

December 31, 1974

- 3 -

Pub. Law 93-573

88 STAT. 1875

REPORTS

SEC. 206. (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities.

Reports to
President
and Congress.
17 USC 201
note.

(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.

POWERS OF THE COMMISSION

SEC. 207. (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material.

17 USC 201
note.

(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.

TERMINATION

SEC. 208. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.

17 USC 201
note.

Approved December 31, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1581 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 120 (1974):

Sept. 9, considered and passed Senate.

Dec. 19, considered and passed House, amended; Senate concurred
in House amendments.

CORRESPONDENCE

CBEMA,

Washington, D.C., March 17, 1977.

HON. ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice,
 U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN KASTENMEIER: CBEMA supports H.R. 4836 to extend the reporting deadline of the National Commission on New Technological Uses of Copyrighted Works (CONTU) to September 30, 1978. As the trade association which represents the major manufacturers of computer systems, all of whom are intensively engaged in creation of computer software and novel applications of computer technology, CBEMA has long been concerned with the application of the copyright law to such software. We have actively participated before the Commission and from our experience feel that it has, after its belated appointment, begun a very worthwhile development of views regarding the very difficult issues before it.

It is our concern that the Commission have enough time to properly assess these issues with further input from the private sector and then draw conclusions from its data which will enable us to move forward in making the best use for society of this new technology.

If you have any questions regarding our position, we would be more than pleased to discuss them with you.

Very truly yours,

PETER F. McCLOSKEY, *President.*

COPYRIGHT OFFICE,
 LIBRARY OF CONGRESS,
Washington, D.C., March 17, 1977.

HON. ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice,
 House Committee on the Judiciary, U.S. House of Representatives, Washington,
 D.C.*

DEAR BOB: I am taking this opportunity to urge that the Subcommittee on Courts, Civil Liberties, and the Administration of Justice give favorable consideration to the request made recently by the National Commission on New Technological Uses of Copyrighted Works (CONTU).

As you well know, there was initially a long delay in the appointment of the Commissioners, and the first meeting of the Commission did not take place for more than nine months after the legislation enacting CONTU was signed into law. Moreover, the enormously valuable work done by the Commission in bringing the parties together and in establishing guidelines with respect to "systematic" interlibrary photocopying activities under § 108(g)(2) of the new copyright law occupied the Commission for some five months during 1976. Considering the difficulties involved, is is no exaggeration to describe these guidelines as a monumental achievement, an accomplishment that in itself goes a long way toward justifying CONTU's existence. But, of course, this effort was ancillary to the main purposes for which the Commission was established, and it necessarily delayed consideration of the broader issues included in CONTU's legislative mandate.

The Copyright Office is concerned that the Commission have adequate time to explore and report on the issues related both to photocopying and to the computer uses of copyrighted works. The amount of work it has done so far, including the collection, analysis, and synthesis of a great deal of valuable and significant information, promises that CONTU's final report will more than fulfill the purposes for which it was intended. To insure that the Commission has adequate time to complete its investigations, to go through a process of drafting and consultation on the final report, and to publish the report in final form, will require an extension of the current deadline (December 31, 1977). I believe that the seven-month extension provided in H.R. 4836 is justified, and I recommend that your subcommittee take favorable action with respect to it.

Yours sincerely,

BARBARA RINGER,
Register of Copyrights.

THE ASSOCIATION OF AMERICAN UNIVERSITY PRESSES, INC.,
New York, N.Y., March 16, 1977.

HON. ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of
Justice, Committee on the Judiciary, U.S. House of Representatives, Rayburn
House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: I write to urge the extension of the mandate of the National Commission on New Technological Uses of Copyrighted Works (CONTU) in order to allow the Commission the time necessary to complete their extremely important task. The work of CONTU in refining and providing for implementation of the Revised Copyright Act is far too important to all parties concerned, and to the public interest as well, to justify the truncation of what must necessarily be a methodical and painstaking task.

Sincerely yours,

JOHN B. PUTNAM, *Executive Director.*

COMPUTER LAW ASSOCIATION,
Washington, D.C., March 9, 1977.

HON. ROBERT KASTENMEIER,
*Rayburn House Office Building,
The Capitol, Washington, D.C.*

DEAR CONGRESSMAN KASTENMEIER: The Computer Law Association understands that a request has been made for a brief extension of the life of the National Commission for New Technological Uses of Copyrighted Information (CONTU). CLA believes that this extension should be granted. The extension would permit CONTU to devote a full three years to the diverse and important tasks which it has been asked to accomplish.

Our membership, some two hundred and fifty lawyers concerned with the legal aspects of computer use, supports having time to develop fully computer related recommendations. We believe that questions related to software copyright, the protection of databases, and authorship in computer created works of importance are very significant to all who live in an increasingly information oriented society. The extension requested should serve the public interest by allowing CONTU to make its investigation of these issues as thorough as possible.

Thank you for your consideration.

Sincerely,

HERBERT E. MARKS, *President.*

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