

Summary

This report has presented the recommendations of the Commission for the changes in copyright law and procedure needed to balance the interests of copyright owners and users of works created by the application of and used in conjunction with computers and reprographic systems. In developing these recommendations, the Commission also has sought to consider how the interests of the general public and the ultimate consumer may be affected. As is apparent from a reading of those recommendations and the accompanying expository material, the Commission believes that the new law, by and large, effectively deals with the interests of both proprietors and users and requires but little modification at this time. The Commission, however, believes that Congress should immediately enact legislation to repeal section 117 of the 1976 Act and should carefully consider the introduction of legislation dealing with computer software or programs in light of the controversy surrounding that area. Any legislation dealing with either computer or photocopying issues enacted and based upon these recommendations should be subject to a process of periodic review similar to that mandated for certain photocopying procedures in section 108(i) of the Act of 1976. It is apparent to this Commission that technology will continue to pose new problems for the copyright system, and this review will help keep the law in step with technological and economic development.

It is equally important to note that these recommendations do not deal with each and every technological issue affecting the interests of copyright users and owners. Specific topics may deserve congressional attention. Indeed, two such topics have been raised before the Commission and are deemed to be outside the scope of its mandate: (1) the off-the-air videotaping of television broadcasts of copyrighted works;

and (2) protection for the topography or layout of microcircuit chips.

With respect to off-the-air videotaping, the Commission determined that it should not take up this subject, since the legislative history clearly shows that Congress intended the mandate to study machine reproduction to apply to photocopying. Additionally, the Commission believed that the issues involved in off-the-air videotaping were essentially matters requiring public policy decisions not related to technology per se, and that these matters were being tested in a pending legal action.²⁶⁶

The question of copyright protection for the topography of microcircuit chips was raised by a manufacturer of these devices too late to be dealt with adequately by the Commission.²⁶⁷ These chips are complex electronic circuits built up on silicon chips by steps involving a type of photographic reproduction on several layers, each similar to the preparation of a photoengraving. Layouts of the structures in each of these layers are produced at great expense and converted to a type of photographic plate, called a mask, to be used as a master in the successive photographic reproductions previously mentioned. It is asserted that the chips produced by use of these masks should be protectable by copyright since the masks may be readily duplicated either by outright copying or by disassembling and chemically treating a chip to expose each layer. The topography contained on these layers may then be photographed and used to prepare masks which duplicate those originally used to produce the chip, a result which the manufacturer claims would infringe its copy-

²⁶⁶ *Universal City Studios, Inc. v. Sony Corporation of America*, No. 76-3520F, C.D. Cal.

²⁶⁷ Certain questions relating to this issue may be answered in another pending lawsuit, *Intel Corp. v. Ringer*, No. C-77-2848-RHS, N.D. Cal.

right as would the use of these masks to produce copies of the original chip.

Examples cited emphasize the need for the continued monitoring and oversight of technological developments not encompassed or anticipated in the Copyright Act of 1976. Human ingenuity will continue to develop new works which may be in themselves copyrightable and will employ existing copyrighted works in new ways in the production of literary, artistic, and

even utilitarian works. If this process of innovation and enrichment of our cultural heritage is to continue, the rights of authors and creators of these works must be protected and the public dissemination and use of these works encouraged. The recommendations and considerations contained in this report are intended to do just that and thereby promote the progress of science and the useful arts for the advancement of the general public welfare.