

The Commission and Its Recommendations

The National Commission on New Technological Uses of Copyrighted Works (CONTU) was created by Congress as part of the effort to revise comprehensively the copyright laws of the United States.¹ Early in the congressional hearings on copyright law revision it became apparent that problems raised by the use of the new technologies of photocopying and computers on the authorship, distribution, and use of copyrighted works were not dealt with by the then pending revision bill. Because of the complexity of these problems, CONTU was created to provide the President and Congress with recommendations concerning those changes in copyright law or procedure needed both to assure public access to copyrighted works used in conjunction with computer and machine duplication systems and to respect the rights of owners of copyrights in such works, while considering the concerns of the general public and the consumer.

This report presents those recommendations, based on the three years of data collection, hearings, analysis, and deliberation called for in the Commission's enabling legislation. The recommendations are summarized initially and discussed subsequently in detail in Chapter 3, which deals with computers, and Chapter 4, which concerns photocopying.

¹ The results of this revision was P.L. 94-553 (1976) now codified as 17 U.S.C. § 101 *et seq.*, selected portions of which appear in Appendix J. This law is referred to throughout this report as the "Act of 1976," "1976 Act," or "new law." The legislative history of this act is contained in U.S., Congress, Senate, Judiciary Committee, 94th Cong., 1st sess., 1975, S. Rept. 473 (hereinafter cited as Senate Report); U.S., Congress, House, Judiciary Committee, 94th Cong., 2d sess., 1976, H. Rept. 1476 (hereinafter cited as House Report); and U.S., Congress, House, Judiciary Committee, 94th Cong., 2d sess., 1976, H. Rept. 1733 (hereafter cited as Conference Report).

Recommendations

Computer Legislation

Software or Programs

The new copyright law should be amended: (1) to make it explicit that computer programs, to the extent that they embody an author's original creation, are proper subject matter of copyright; (2) to apply to all computer uses of copyrighted programs by the deletion of the present section 117; and (3) to ensure that rightful possessors of copies of computer programs may use or adapt these copies for their use.

Commissioner Hersey's dissent: The Act of 1976 should be amended to make it explicit that copyright protection does not extend to a computer program in the form in which it is capable of being used to control computer operations.

Data Bases

The Act of 1976 should be amended to apply to all computer uses of copyrighted data bases and other copyrighted works fixed in computer-sensible media by the deletion of its present section 117.

New Works

Works created by the use of computers should be afforded copyright protection if they are original works of authorship within the Act of 1976. Consequently no amendment is needed.

Computer Regulations

The Register of Copyrights should adopt appropriate regulations regarding the affixation of notice to and the registration and deposit of works of authorship used in conjunction with computers.

Congressional Action Concerning Computers

Any legislation enacted as a result of these recommendations should be subject to a periodic review to determine its adequacy in the light of continuing technological change. This review should especially consider the impact of such legislation on competition and consumer prices in the computer and information industries and the effect on cultural values of including computer programs within the ambit of copyright.

Photocopying Legislation

The Act of 1976 should be amended at this time only to provide specific guidance for situations in which photocopying is done by commercial organizations on demand and for profit.

Copyright Office and Photocopying

In conducting the five-year review of photocopying practices required by section 108(i) of the Act of 1976, the Register of Copyrights should begin immediately to plan and implement a study of the overall impact of all photoduplication practices on both proprietors' rights and the public's access to published information.

Other Government Agencies and Photocopying

Publishers, libraries, and government agencies should cooperate in making information about the copyright status of all published works, both current and older publications, more readily available to the public.