

VRA Open Letter to USPTO

Mr. Keith M. Kupferschmid
Commissioner of Patents and Trademarks
Box 4, Patent and Trademark Office
Washington, DC 20231
November 22, 1996

Dear Mr. Kupferschmid,

Recent discussion of intellectual property rights at both the national and international level are a concern to members of the Visual Resources Association. VRA, whose members include museum curators, slide librarians, and other visual resources professionals, has been closely following the proceedings of the World Intellectual Property Organization. Enumerated below are the main areas of concern that the VRA feels are significant enough to warrant our recommendation that the Executive Branch of the U.S. Government withhold further action at the international level. It is our sense that the adoption of the proposed WIPO treaties would not only be premature, but would set a dangerous precedent. We understand that the WIPO conference is being convened in December of this year for consideration of three treaties on intellectual property rights. The Visual Resources Association submits these comments on the WIPO treaties in response to the U.S. Patent and Trade Office's request for public comment in the Federal Register (October 17, 1996).

1. The act of adopting international treaties would stifle the U.S. Congress' ability to resolve intellectual property rights issues at the national level. Aspects of international treaties would make it necessary to legislate at the national level to retain basic IPR rights all U.S. citizens enjoy as members of a free society.
2. Adoption of the proposed WIPO treaties would be premature in light of the fact that consensus has not yet occurred at the national level on copyright issues in the digital age. The 104th U.S. Congress tabled legislation this year after industry, the private sector, and educational and library communities voiced grave concerns over restrictions in the proposed national legislation. It is appropriate to build a national consensus on laws that would affect all American citizens before moving into the international arena. Balanced copyright law is of concern to all American citizens and it is the duty of the U.S. Government to resolve any policy controversies before looking into global implications. In addition, there are currently other countries with unresolved IPR legislation. A strong and viable international IPR "umbrella" will only work if it is based on the "building blocks" of resolved legislation at the national level.
3. Adoption of the treaties would be premature for another fundamental reason. The technologies being considered for regulation are new and are still rapidly evolving. Since broad use of the technologies has occurred over

only the last five years or so, we are concerned that any legislation may not fully accommodate further evolution of the media.

4. The issue of Fair Use is not addressed in the treaties. Adopting these treaties (see Article 12 of the draft Protocol) would have sweeping implications and seriously undermine Congress' ability to retain the important concept of Educational Fair Use. Fair Use would have to be legislated at the national level, otherwise it would cease to exist. The treaties would hamper efforts to continue to afford American citizens the benefits of Educational Fair Use. In the electronic media this would include distance learning, library preservation efforts, and simple educational access to networked information within the classroom and library settings.
5. The proposed treaty (Article 7, the draft Protocol) would prohibit ephemeral RAM copies of copyrightable information, disallowing casual browsing of World Wide Web sites. Unless each nation legislates to allow such browsing, use of the Web would become illegal. Interestingly enough, in its attempt to "think globally," the U.S. Government's Executive Branch, if it chooses to adopt this treaty, would, in fact, retard international communication and interaction. The Internet would become a series of closed doors and the 21st century global community would be unnaturally hobbled. In addition, how will technologically advanced countries manage to integrate with technologically advanced countries under WIPO agreements?
6. The treaty on Databases is singularly premature as discussion of its severe restrictive implications has not yet been fully debated in the U.S. legislative process. We feel that this treaty should be removed from consideration at Geneva. The American way of life which allows its citizens broad access to public information, would be restricted by the proposed database treaty. From sports statistics to scientific research information, from election returns to medical records, these international regulations would diminish access to such public information. By so doing, it would place unconstitutional restrictions on American citizens.
7. Article 10 of the proposed Protocol is unduly prohibitive of the flow of information in that it exposes on-line service providers to copyright infringement liability. This may include educational institutions and libraries that manage computer systems. Therefore, Article 10 would retard the expansion of educational electronic systems and unduly restrict the expansion of commercial OSPs. Electronically monitoring and policing hundreds of thousands of accounts for infringement and the impact of lawsuits could cripple the on-line service provider.

In conclusion, it is our recommendation that the three proposed treaties for consideration in Geneva should be amended broadly to allow national governments to retain total flexibility in copyright debate and legislation. If such amendments are not possible, those treaty proposals should be thoroughly discussed in Geneva, but all action deferred until national governments can resolve their copyright issues within their own countries. The U.S. and other governments are currently debating these issues and should be allowed full flexibility in pursuing discussion, debate,

hearings, and finally, legislative choices. A premature international agreement is inadvisable at this time.

Sincerely,

Joseph Romano
President, Visual Resources Association
Kathe Hicks Albrecht
Visual Resources Association
Intellectual Property Rights Committee
Visual Resources Association