Americans, we are not affiliated with the organization, nor are we in any way responsible for their actions or statements.

I point this out to my colleagues because it is reasonable to assume that an organization that calls itself a congressional caucus institute would be associated with or answerable to the congressional caucus or its members. In fact, I have had many conversations both on and off Capitol Hill in which people refer to this group as your institute, meaning mine.

It is obvious to me that the most effective way for this group to avoid this kind of confusion in the future is to change its name, removing any stated affiliation to the Congress or the Congressional Asian Pacific American Caucus. Indeed, the caucus' chair, our colleague Representative PATSY MINK, has requested such a name change both verbally and in writing. Yet to this day the organization continues to use the misleading name creating more confusion.

Mr. Speaker, as I stated earlier, I wish to do no harm to any outside organization pursuing laudable goals such as those espoused by this particular group. However, in light of the fact that this group continues to represent itself in a misleading manner, I feel it necessary to state for the record that the Congressional Asian Pacific American Caucus Institute, despite what the name would indicate, is not affiliated with the Congressional Asian Pacific American Caucus or the Congress in any way.

INTRODUCTION OF THE DIGITAL ERA COPYRIGHT ENHANCEMENT ACT

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1997

Mr. BOUCHER. Mr. Speaker, I rise today with my distinguished colleague the gentleman from California, Mr. CAMPBELL, to introduce the Digital Era Copyright Enhancement Act. We believe this legislation best advances the interests of both creators and users of copyrighted works in the digital era by modernizing the Copyright Act in a way that will preserve the fundamental balance built into the act by our predecessors throughout the analog era.

We offer this measure as an appropriate starting point for congressional discussion of a range of copyright changes which the advent of digital technology will require in the belief that the legislation will serve as a solid foundation for the debate on these matters next year. We look forward to participating with the administration, other Members of Congress and interested external parties as next year's discussions commence.

At the request of the administration, legislation was introduced earlier this year to implement two treaties negotiated by more than 100 nations under the auspices of the World Intellectual Property Organization [WIPO]. The matters raised by introduction of the administration's WIPO implementing legislation certainly are important, but these issues should not be addressed in isolation.

I believe that we should address other compelling matters as part of a comprehensive measure revising the Copyright Act for the digital era. Moreover, I have serious concerns regarding the approach taken in the administration's legislation in addressing so-called circumvention devices.

As more fully explained in the section-by-section analysis that accompanies this statement, our comprehensive legislation addresses matters of concern not only to copyright proprietors, but also to consumers, educators, librarians, archivists, device manufacturers, and other groups concerned about maintaining a proper balance in the Copyright Act. For the benefit of my colleagues, I thought it would be helpful to describe the provisions of our legislation, focusing in particular on proposed section 1201.

Section 1201. Because I have serious reservations about the implications for digital technologies of the administration's device-oriented approach to section 1201, I have crafted an alternative that is more properly and closely tailored to our WIPO treaty obligations.

Last December, when the U.S. Government and the representatives of more than 100 other governments met in Geneva to negotiate the text of the two WIPO treaties, they initially considered a draft text prepared by the chairman of the drafting committee, Mr. Liedes of Finland. That provision would have essentially outlawed the manufacturing of any device the primary purpose or effect of which is to avoid any anticopying technology. Perhaps not surprisingly, opposition to this device-oriented approach was expressed by numerous countries based upon a concern that such a provision could sweep within its reach legitimate and useful technology and inhibit the willingness of manufacturers to bring new products to market. As a result of that strong opposition, the device oriented this approach was dropped. Instead, the delegates adopted an alternative formulation that closely followed language I had proposed to the administration prior to the diplomatic conference.

And yet, the device-oriented approach having been rejected by the delegates in Geneva, the administration nonetheless has proposed as the core of its legislation implementing the WIPO treaties a device-oriented provision.

During the hearings held this fall before the Judiciary Committee's Courts and Intellectual Property Subcommittee, the Commissioner of Patents and Trademarks confirmed what many private-sector witnesses argued in their testimony, namely that the adoption of legislation that essentially would punish the manufacturers of devices, such as general purpose computers and recorders, is not necessary for the implementation of the WIPO treaties. Commissioner Lehman correctly stated that the United States could take an entirely different and I think more positive approach by adopting legislation that does not punish the manufacturer of devices but instead punishes circumvention conduct tied to the act of infringement.

The subcommittee also heard compelling testimony that the approach of the administration's bill would stifle the introduction of new technology and would effectively overturn the long-settled law of the United States as announced by the Supreme Court in 1984 in its Betamax decision, Sony Corp. of America versus Universal City Studios, Inc. In that case, the Court held that a manufacturer could not be held liable for contributory copyright infringement for manufacturing a device that had a substantial non-infringing use. Even though there may be infringing uses for the device, the presence of a single substantial non-infringing use renders the manufacturer unanswerable under the copyright law.

That case is the state of our law today with respect to devices which have both infringing and non-infringing uses. It is that settled law which the administration's proposed treaty implementing legislation would effectively overturn.

If that measure were to become law, equipment manufacturers would be liable when their devices have legitimate, non-infringing uses. The consequences, I fear, will be a reluctance to bring pioneering new technology to market or even to continue the manufacturing of existing technology that has potential infringing uses.

Mr. Speaker, what is needed is a more thoughtful approach, one clearly contemplated by the WIPO convention that rejected the device-oriented approach, one consistent with well-settled American law, and one that will not stifle the development of new technology. We have proposed that alternative.

Section 1201 of our legislation would create liability for a person who, for purposes of facilitating or engaging in an act of infringement, knowingly removes, deactivates, or otherwise circumvents the application or operation of an effective technological measure used by a copyright owner to preclude or limit reproduction of a work in a digital format. Our legislation appropriately puts the focus on conduct, not on devices.

Let me now briefly describe the other elements of our legislation.

Section 1202. We have taken as our starting point the administration's proposed section 1202, but have revised it in part to ensure protection of the privacy interests of users of new technology. Our legislation would create liability for a person who knowingly provides false copyright management information or removes or alters copyright management information without the authority of the copyright owner, and with the intent to mislead or induce or facilitate infringement. In order to assure privacy protection, the measure explicitly excludes from the definition of copyright management information any personally identifiable information relating to the user of a work.

Fair Use. The legislation makes clear that the Fair Use doctrine in the copyright law—which generally preserves the ability of users, including libraries, teachers and scholars, to make limited, noncommercial use of copyrighted works—continues to apply with full force in a digital networked environment.

First Sale. Given the historical importance to libraries, scholars, educators, and consumers of transferring to others lawfully acquired copies of works, the legislation offers assurances of the continued applicability in the digital environment of the First Sale doctrine.

Library Provisions. The legislation permits libraries to utilize digital technologies for preservation purposes and increases the number of copies of a work that may be made for archival purposes.

Distance Learning. The legislation fully authorizes educators to use data networks for distance learning in the same way they now use broadcast and closed-circuit television for that purpose.

Ephemeral Copying. The legislation amends the Copyright Act to make explicit that it is not an infringement for a person to make a digital copy of a work when such copying is made incidental to the operation of a computer in the course of the use of the work in a way that is otherwise lawful.

Preemption. Finally, the measure includes a measure to address the increasing practice by which copyright owners use non-negotiated terms in ''shrink-wrap'' or ''click-on'' licenses in ways that can abrogate or narrow federal rights consumers otherwise would enjoy under the federal Copyright Act.

With this bill, Mr. CAMPBELL and I have proposed the only comprehensive legislation offered in this body to date that addresses the fundamental issues raised by the transition from the analog era to the digital era. I look forward to working with the gentleman from California, the members of the Judiciary Committee, the administration, and external interested parties as we preserve the balance that will be necessary to advance the progress of science and useful arts in the 21st century.

DIGITAL ERA COPYRIGHT ENHANCEMENT ACT

SECTION-BY-SECTION ANALYSIS

Short title. The ''Digital Era Copyright Enhancement Act.''

Fair Use. Section 2 makes clear that the fair use doctrine continues to apply with full force in the digital networked environment. As initially proposed, the World Intellectual Property Organization (WIPO) Copyright Treaty would have expanded the rights of information owners while arguably narrowing the exceptions to those rights which have long been recognized as appropriate for limited copying by libraries and similar entities for public information purposes. At the instigation of the United States, the delegates adopted the following Agreed Statement to clarify the meaning of the treaty in this respect:

''It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.''

Consistent with this Agreed Statement, Section 2 of the proposed bill would amend section 107 of the Copyright Act to reaffirm that a finding of ''fair use'' may be made where appropriate, without regard to the technological means by which a work has been performed, displayed or distributed or whether an effective technological protection measure has been applied to it. This language would assure that the fair use doctrine would remain technology neutral, applying to all copyrighted works, regardless of the manner in which they are distributed or used.

Library/Archive Exemptions. In 1976, the Copyright Act was expressly amended to facilitate the preservation of decaying or otherwise unavailable copyrighted works by authorizing libraries and archives to make a ''facsimile'' of such works. (An analog facsimile was the best available technology at the time.) This clause has been read by some, however, to preclude the use of digital or other advanced technology for preservation purposes.

Like the Administration's original NII legislation introduced in the 104th Congress (H.R. 244I/S. 1284), Section 3 would amend section 108 of the Copyright Act to allow libraries and archives to use new forms of technology by deleting the phrase ''in facsimile form''. In addition, Section 3 would permit the making of three rather than just one copy of a work for archival purposes as allowed under current law, as well as in instances in which the existing format in which a work is stored has become obsolete. Such an approach was specifically endorsed by the Register of Copyrights in her testimony on the original NII legislation.

First Sale. Section 4 would amend section 109 of the Copyright Act to establish the digital equivalent of the ''first sale'' doctrine. Under current law, a person who has legally obtained a book or video cassette may physically transfer it to another person without permission of the copyright owner.

Given the historical importance to libraries, scholars, educators, and consumers of transferring to others lawfully acquired copies of works, Section 4 would permit electronic transmission of a lawfully acquired digital copy of a work as long as the person making the transfer eliminates (e.g., erases or destroys) that copy of the work from his or her system at substantially the same time as he or she makes the transfer. To avoid any risk that the mere act of making the transfer would be deemed an infringing act under existing section 116 of the Copyright Act, Section 4 of the proposed bill states that the ''reproduction of the work, to the extent necessary for such performance, display, or distribution, is not an infringement.''

Distance Learning. Since the advent of broadcasting, educators have striven to use the latest communications technologies to enhance educational opportunities. Through the Copyright Act, as amended in 1976, Congress has supported such ''distance learning'' by exempting qualifying television transmissions designed to be received in traditional class-room like settings. (At the time, broadcast and closed-circuit television was the ''state of the art'' distance learning technology.)

Section 5 of the proposed bill would amend sections 110(2) and 112(b) of the Copyright Act to ensure that educators can use personal computers and new technology in the same way they now use televisions to foster distance learning. Students today enjoy the benefits of distance education in large part because section 110(2) allows for the ''performance or display'' of certain works delivered by means of ''transmission'' (principally television) in non-profit educational settings. It is generally understood, however, that transmission of a work over a digital network may constitute a ''distribution'' as well as (or even instead of) a ''performance'' or ''display.'' Section 5 of the proposed bill thus would specifically add ''distribution'' to the list of conditionally exempt educational uses.

In addition, Section 5 would broaden the range of works that may be performed, displayed, or distributed to include the various kinds of works that might be included in a multimedia lesson. It also would broaden the educational settings subject to the exemption to include the various no-classroom settings (including the home) in which pupils could receive distance learning lessons.

To guard against the potential for abuse, Section 5 stipulates that the performance, display, or distribution of the work must occur as part of ''the systematic instructional activities of a governmental body or nonprofit educational institution,'' must be ''directly related and of material assistance to the teaching content of the transmission,'' and must be provided to ''students officially enrolled in the course in connection with which [the work] is provided.'' Moreover, like existing section 110(2), the new provision would extend an exemption only to teachers and their institutions, and only for materials used to illustrate particular lessons. It would not extend to companies or individuals who prepare distance learning materials for use by educators; they would be required to obtain copyright licenses, as appropriate, for the incorporation of pre-existing works in such materials.

Ephemeral Copying. Given the architecture of computers and data transmission networks, the simple act of viewing a downloaded image or sending an e-mail message creates an incidental or ephemeral reproduction (e.g., in RAM or cache memory). Although such ''ephemeral copies'' are not stored permanently, content owners last year sought to get the same rights to control ephemeral reproductions as they enjoy regarding analog ''hard'' copies (or digital ROM copies) today. In fact, as originally drafted, Article 7 of the WIPO Copyright Treaty expressly provided that temporary reproductions should be considered the equivalent of hard copies and thus subject to proprietors' control. In response to strong opposition from both developed and developing countries at the Diplomatic Conference in Geneva in December, Article 7 was dropped from the treaty in its entirety.

Section 6 of the proposed bill would amend section 117 of the Copyright Act to make explicit that it is not an infringement for a person to make a digital copy of a work when such copying is made incidental to the operation of a computer or other device in the course of the use of the work in a way that is otherwise lawful, as long as such copying does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. Thus, for example, a person would not be subject to liability for viewing a copyrighted work on the World Wide Web simply because ephemeral copies of the work would have been made in the normal course of the operation of the Internet.

Preemption. Content owners are increasingly using ''click on'' and ''shrink wrap'' license terms to limit what a consumer can do with a lawfully acquired copy of a work, or the uses to which a consumer can put the work itself. They are engaged in an effort at the state level to achieve adoption of a change to the Uniform Commercial Code that would recognize the validity of such terms under state contract law. If successful in these efforts, content owners will be able to eliminate fair use and other privileges established under the federal Copyright Act by means of stipulated license terms to which a consumer must agree in order to gain access to a work.

Section 7 would effectively preclude copyright owners from using non-negotiable license terms to abrogate or narrow rights and use privileges that consumers otherwise would enjoy under the Copyright Act, such as their fair use privilege, by preempting state common and statutory law, such as the proposed changes to the Uniform Commercial Code. In recognition that businesses and institutions might be willing to forego these rights in return for other consideration in an arms-length negotiated contract setting, preemption only applies with respect to non-negotiable license terms.

WIPO Treaty Implementation. Section 8 would implement the anti-circumvention and copyright management information provisions of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

With respect to anti-circumvention, the WIPO treaties require only that contracting parties ''provide adequate legal protection and effective legal remedies against circumvention of effective technological measures. . . .'' Adopting a conduct-oriented approach fully compliant with this mandate, new section 1201 would create liability for a person who, for purposes of facilitating or engaging in an act of infringement, knowingly removes, deactivates, or otherwise circumvents the application or operation of an

effective technological measure used by a copyright owner to preclude or limit reproduction of a work in a digital format. Conduct governed by a separate chapter (e.g., chapter 10—the Audio Home Recording Act of 1992) would not be governed by this new provision. The provision does not apply to technological protection measures applied to a work in an analog format.

New section 1202 would create liability for a person who knowingly provides false copyright management information or removes or alters copyright management information without the authority of the copyright owner, and with the intent to mislead or induce or facilitate infringement. In order to assure privacy protection, this provision explicitly excludes from the definition of copyright management information ''any personally identifiable information relating to the user of a work, including but not limited to the name, account, address or other contact information of or pertaining to the user.''

New section 1203 establishes civil penalties for violations of sections 1201 and 1202. Unlike the Administration's treaty implementation bill, no criminal penalties would be imposed for violations of either section 1201 or 1202.

Conforming Amendments. Section 9 merely makes conforming amendments to the table of sections for chapter 1 of title 17 and the table of chapters for title 17.

Effective Dates. Section 10 sets forth two separate effective dates. Those provisions unrelated to the WIPO treaties would be effective on the date of enactment. The WIPO implementation provisions would take effect when both treaties have entered into force with respect to the United States.

ASIAN FINANCIAL CRISIS

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1997

Mr. PAUL. Mr. Speaker, the Asian financial markets are unsteady, and for good reasons. Many have correctly anticipated the ongoing financial events as a natural consequence of a sustained worldwide credit expansion of unprecedented proportions. According to free market/sound money economics, all credit expansions set the stage for the correction. These corrections are undesired by the dreamers of perpetual prosperity generated by loose central bank monetary policy.

The source of the problem, the world financial markets currently face, is unwise monetary policy—plain and simple. Although the business cycle has been fully understood by the Austrian free market economists throughout most of this century, they have been ignored by our government-run universities, the major media, and the politicians. And since the now-collapsing financial bubble was the largest ever, due to an unprecedented globalization of credit expansion, the implications for the world economy should gain the attention of everyone concerned about public policy.

The world has been functioning with total fiat currencies for more than a quarter century—a first. Even with continuous adjustment in the international exchange markets, artificial relationships develop between currencies. These imbalances are subject to market forces, demanding new exchange rates, and as we are witnessing, they occur with shocks to the entire financial system. More huge IMF bailouts as are currently planned will not solve the problems.

The suspension of standard lending limits only sends the wrong signal of fiscal and monetary irresponsibility and sets the stage for a larger financial crisis. According to normal IMF lending standards, a country can only borrow up to 150 percent of its quota with the fund. However, the Mexican peso crisis created a new precedent and allowed a country to borrow more than the rules allowed. Thailand will get $3.9 billion from the IMF which is 505 percent of its quota while Indonesia will receive $10.1 billion amounting to 490 percent of its quota. Mexico was offered $17.8 billion, 688 percent of its quota, in 1995.

Governments can instill value in a paper currency only temporarily; but markets ultimately dictate real worth at great cost to the currency stability the money managers pretend to achieve. More bailouts at the expense of the American taxpayers are wrong.

Monetary inflation and credit expansion of paper currencies mislead all financial participants. Fictitious interest rates promote mal-investment, over capacity, excessive debt, false confidence and rampant speculation. The longer the misdirected economy functions, the more widespread the credit expansions and the bigger the bubble and unfortunately the more serious the correction. And this current expansion has been a big one.

The principal engine of this inflation has been the Federal Reserve, fueled by its misperception about the dollar's influence on worldwide credit expansion. Without the benefit of a commodity standard of money and with a fiat dollar being retained as the reserve currency of the world, our excesses have been paid for by foreigners willing to sell us goods for our paper, buy our treasury bills, hold them in reserve and use them to expand their own currencies and credit, thus feeding their own domestic booms.

Congress does have a role in and responsibility for all of this. Instead of conceding monetary policy to a highly secretive, unaudited, off-budget, without oversight, central bank, our responsibility, under the Constitution, is to guarantee a sound convertible currency. There is no authority whatsoever for reckless credit expansion to be used as a tool for managing the economy. This illegal power to do so has given us everything from the Great Depression to the inflation of the 1970's and all the recessions in between. Inflationism has permitted excessive welfare spending and the accumulation of a $5.4 trillion national debt, by a central bank's ever-willingness to monetize the debt generated by the Congress.

As financial conditions continue to adjust, and probably worsen, we here in the Congress must give serious consideration to monetary policy, our constitutional responsibilities to maintain a sound economy and assume rigid oversight of the Federal Reserve. Placing blame elsewhere for the turmoil would be a rejection of our responsibilities.

If we fail to address this problem correctly, the dollar and the U.S. economy will one day come under siege similar to what is currently happening in Asia. We should work diligently to prevent that from happening.

TRIBUTE TO LUIS CARLOS MEYER

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1997

Mr. SERRANO. Mr. Speaker, I rise to pay tribute to Luis Carlos Meyer for his contributions to this Nation and to Latin America as one of the most talented composers of folkloric Colombian music.

Mr. Meyer is one of the most famous exponents of ''cumbia'' of this century. He is credited with being one of the pioneers who introduced ''cumbia'', a dancing rhythm from the seashores of Colombia, in the United States, Canada, and Latin America.

Mr. Meyer, now 81, has been living in the Laconia Nursing Home, in the Bronx, for the past 5 years.

Reporter Javier Castaño recently wrote a series of articles on Mr. Meyer which were published in the Spanish newspaper El Diario/La Prensa, in New York, after a Puerto Rican nurse who tended Mr. Meyer informed him that the famous musician was living in the nursing home. Mr. Meyer has recovered his zest for life since friends and other members of the community started to visit him again and paid tribute to him after they learned of his whereabouts from the newspaper articles.

Mr. Meyer was born in 1916 in Barranquilla, Colombia. His talent for singing and playing the guitar was evident at a very young age. Already a renowned musician in his home town, he left for the capital city of Bogota, where his career continued to bloom.

In 1945, at the age of 29, Mr. Meyer decided to bring his music to other Latin American countries, the United States, and Canada. In Latin America, he enjoyed enormous success with his many compositions. ''Micaela,'' ''El Hijo de Mi Mujer,'' ''Linda Jorachita,'' and ''Trópico'' were immediate successes in Mexico, Venezuela, and Panama. He also performed various roles on the large screen in Mexico.

According to some accounts, Mr. Meyer came to New York City in 1958. He sang with the Xavier Cugat Orchestra and performed on the stages of ''El Chico,'' ''Chateau Madrid,'' and ''Fantasy'' in New York City. HIs music was acclaimed by the audiences of the time and continues to be in demand in many communities in the United States. He has been living in New York City over the past 30 to 40 years.

Mr. Speaker, I ask my colleagues to join me in recognizing Luis Carlos Meyer for his life of artistic achievements and for sharing his music with the peoples of this Nation. His gift to our country and to our people has not gone unnoticed.

THE LAYMEN'S RETREAT LEAGUE

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 13, 1997

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today to recognize and congratulate the Laymen's Retreat League as they celebrate the 75th anniversary of the opening of their retreat center St. Joseph's-in the-Hills in Malvern, PA.