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FolderID:	

Folder Title:
Information Infrastructure

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S	20	5	7	3

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 24, 1995

95 OCT 25 P 7:56

MEMORANDUM TO THE PRESIDENT

FROM: Federico Peña
Secretary of Transportation

Federico Peña

SUBJECT: Proposals for Infrastructure Initiatives

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WASHINGTON, D.C. 20503

AUG - 2 1995

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MEMORANDUM FOR MEMBERS OF THE INFORMATION INFRASTRUCTURE TASK FORCE (IITF)

FROM: Sally Katzen
Chair, Information Policy Committee

SUBJECT: FINAL White Paper on Intellectual Property Rights

Attached for your review is the Executive Summary of the draft final version of the report, "Intellectual Property and the National Information Infrastructure." The report was prepared by the Intellectual Property Rights Working Group and has been approved by the Information Policy Committee. I am requesting IITF approval of this final report for public release. Since it contains proposed statutory amendments, the entire report is being circulated to your agency by OMB's Legislative Reference Division under Legislative Referral Memorandum (LRM) No. 2194.

To prepare this Report, the Working Group drew upon expertise within the participating departments and agencies of the Federal government. In addition, the Working Group received and considered views of the public, including those of the NII Advisory Council. The Working Group held a public hearing in November 1993, at which 30 witnesses testified. The Working Group also solicited written comments and received some 70 statements during a public comment period which closed in December 1993. The Working Group released a preliminary draft of its report (the "Green Paper") in July 1994. Thousands of copies of the Green Paper were distributed to the public in paper form as well as electronically via the IITF Bulletin Board. Following the release of the Green Paper, the Working Group heard testimony from the public in four days of hearings in Chicago, Los Angeles, and Washington, D.C., in September 1994. In addition, more than 1,500 pages of public comments on the Green Paper and reply comments were filed by more than 150 individuals and organizations -- representing more than 425,000 members of the public -- during the comment period, which extended over four months.

The Administration has publicly committed to releasing this report in August. To allow for time to incorporate the comments and print the final report, we must receive your comments no later than August 11, 1995. Please provide your agency's comments to Jeffrey Weinberg of OMB's Legislative Reference Division as provided in the LRM. For further information, please feel free to contact Bruce McConnell of my staff (202-395-3785), or Terri Southwick of the Patent and Trademark Office (202-305-9300). In the interest of efficiency, if we do not receive comments from your agency by August 11th, we will proceed on the assumption that you concur in the report's release.

Attachment

NOT FOR FURTHER DISTRIBUTION

The Report of the IITF Working Group on Intellectual Property Rights

The Working Group on Intellectual Property Rights, which is chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, was established within the Information Policy Committee of the Information Infrastructure Task Force to examine the intellectual property implications of the NII and make recommendations on any appropriate changes to U.S. intellectual property law and policy. The Report addresses each of the major areas of intellectual property law; however, it focuses primarily on copyright law and its application and effectiveness in the context of the NII.

SUMMARY OF RECOMMENDATIONS

COPYRIGHT

- The Working Group recommends that Section 106(3) of the Copyright Act be amended to expressly recognize that copies or phonorecords of works can be distributed to the public by transmission, and that such transmissions fall within the exclusive distribution right of the copyright owner.

- The Working Group recommends that the definition of "transmit" in Section 101 of the Copyright Act be amended to include a definition of a transmission of a reproduction.

- The Working Group recommends that the definition of "publication" in Section 101 of the Copyright Act be amended to recognize that a work may be published through the distribution of copies of the work to the public by transmission.

- The Working Group recommends that the importation provisions in Section 602 of the Copyright Act be amended to reflect the fact that, just as copies of copyrighted works can be distributed by transmission in the United States, they can also be imported into the United States by transmission.

- The Working Group recommends that sound recordings be granted a public performance right.

- The Working Group recommends that the library exemptions be amended to allow the preparation of three copies of works in digital format; to recognize that the use of a copyright notice on a published copy of a work is no longer mandatory; and to authorize the making of digital copies for purposes of preservation.

- The Working Group recommends that the Copyright Act be amended to provide an exemption for non-profit organizations to reproduce and distribute to the visually impaired -- at cost -- Braille, large type, audio or other editions of previously published literary works, provided that the owner of the exclusive right to distribute the work in the United States has not entered the market for such editions during the first year following first publication.

- The Working Group supports the amendments to Section 506 of the Copyright Act and to the criminal law (which sets out sanctions for criminal copyright violations) set forth in a Justice Department proposal which has been transmitted to Congress. The proposed legislation would make it a criminal offense to willfully infringe a copyright by reproducing or distributing copies with a retail value of $5,000 or more. In such cases, commercial advantage or private financial gain (now required by the Act) would not need to be proved.

- The Working Group recommends that the Copyright Act be amended to include a new Chapter 12, which would include a provision to prohibit the importation, manufacture or distribution of any device or product, or the provision of any service, the primary purpose or effect of which is to deactivate, without authority of the copyright owner or the law, any technological protections which prevent or inhibit the violation of copyright.

- The Working Group recommends that the Copyright Act be amended to prohibit the distribution of copyright management information known to be false and the unauthorized removal or alteration of copyright management information. Copyright management information is defined as the name and other identifying information of the author of a work, the name and other identifying information of the copyright owner, terms and conditions for uses of the work, and such other information as the Register of Copyrights may prescribe by regulation.

PATENT

- The Working Group recommends that the PTO obtain public input related to measures that can be adopted to ensure the authenticity of electronically-disseminated publications, particularly with respect to verifying the contents and date of first public dissemination of the publication, and evaluating the substantive value of the information contained in the publication as to its role in patentability determinations.

- The Working Group recommends that the PTO explore the feasibility of establishing requirements or standards that would govern authentication of the date and contents of electronically-disseminated information for purposes of establishing their use as prior art. To develop such standards, the PTO should invite public comment and work with other interested Federal agencies working on authentication standards outside the direct sphere of the patent system.

TRADEMARK

- The Working Group recommends that the PTO, in the context of WIPO meetings on the International Classification system, propose changes to ensure that the system reflects the goods and services of modern information technology.

- The Working Group recommends that the PTO regularly update its <u>Manual for the Identification of Goods and Services</u> to reflect new goods and services used on or in connection with the NII and GII.