

## More news on copyright issues

"Intellectual Property and the National Information Infrastructure," a 238-page White Paper was unveiled on September 5 by Commerce Secretary Ron Brown and Commissioner of Patents and Trademarks Bruce Lehman. The paper builds on a draft Green Paper circulated for comments in July by the Working Group on Intellectual Property, which was formed to assess the protection of intellectual property in a digital age and to recommend changes to the Copyright Act where necessary. ALA has monitored and participated in this Green Paper-White Paper process since its beginnings.

ALA submitted to the Working Group formal comments on the Green Paper which strongly challenged several points in the draft document. One critical area of concern was the elimination of the "First Sale Doctrine" for electronic works, and the requirement that the purpose for transmission of a work be assessed in order to determine whether it was "distributed" or "performed" for purposes of the Copyright Act. ALA also urged the Working Group to make clear that libraries and others may freely use digital techniques for the preservation of copyrighted materials.

The White Paper appears to be focused almost totally on the information infrastructure's commercial potential. ALA will continue to urge that the information infrastructure can and should be used to expand markets, but that such expansion must be accompanied by the expansion of equitable public access to information for students, scholars, small businessmen and women, and people who cannot afford their own computers.

The White Paper also appears to be based on the premise that the only legal protection of copyrighted works—and the resultant restrictions on their use—will spur creativity. ALA has long rejected this argument, noting the critical role that writers' and others' access to material

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has played in the production of new copyrighted works.

Commissioner Lehman commented that great advances will continue to be made in the ability to license the use of copyrighted material online, and he urged publishers to work with schools and libraries to establish suitable licensing arrangements. ALA continues to advocate that regardless of the "usability" and prevalence of licensing technol-

ogy, established exceptions from copyright restrictions for libraries and the codified concept of fair use are not undermined by such innovation.

Additionally, the White Paper is conspicuously silent on the need to clarify how libraries and schools may use digital technology to expand distance learning opportunities (especially for rural Americans) by expanding current interlibrary loan options and creating more accessible "digital libraries" and "electronic reserve rooms" for far-flung students. Equitable public access to information, now guaranteed by current copyright law, can and should expand with the size of the market for copyrighted works on the information superhighway. There should not be an exclusively "bottom line-commercial interest" approach to this whole issue.

ALA will continue to scrutinize the White Paper and looks forward to working with the ACRL community on this critical issue. Adam M. Eisgrau has recently been hired as the legislative counsel in the Washington Office with major responsibilities for intellectual property and copyright issues and we appreciate his contributions to this article. He can be reached at our new offices at (202) 628-8410 or by e-mail: [ame@alawash.org](mailto:ame@alawash.org).

To receive a copy of the White Paper send requests to: "Intellectual Property and the NII," c/o Terri Southwick, Office of Legislative and Congressional Affairs, Patent and Trademark Office, Box 4, Washington, DC 20231. The text is also available electronically on the Net: [www.uspto.gov](http://www.uspto.gov), or by using gopher or telnet to reach [iipf.doc.gov](http://iipf.doc.gov). For more information call the Patent and Trademark Office's Public Affairs Office at (703) 305-8341. ■

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