

Re: **EXEMPTION TO PROHIBITION ON CIRCUMVENTION OF COPYRIGHT
PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES**

Testimony of Aline Soules

Washington, D.C., May 3, 2000

Thank you for this opportunity to speak. I am Aline Soules—I am currently Librarian at the University of Michigan Business School. However, I am not speaking today on behalf of my employer, but on my own behalf.

In my summary of intended testimony, I advocated that we focus on the original intent of copyright law, namely the promotion of learning and the creation of new knowledge. We should also strive to achieve a balance among the needs of authors, creators, publishers, vendors, educators, librarians, learners, and others engaged in these endeavors. In the digital environment, this balance should be preserved as well.

I would like to address some of the activities in which librarians engage to provide access to digital resources for our users. One of the common misconceptions about electronic information is that 'everything on the Internet is free.' But, libraries across the country are spending more and more dollars to subscribe legally to electronic resources that our users demand. Last fiscal year, our small business library spent over \$230,000 out of an \$800,000 materials budget, on electronic resources, and this trend

toward electronic access will continue. This proportion would increase if vendors did not require my library to maintain print in addition to electronic formats.

The digital environment holds great promise for libraries—the benefits to our users are great. Digital technology allows users greater ability to seek and find information. Obviously, searching the Web or a CD-Rom using a sophisticated search engine is preferable to the traditional methods of searching in print indexes. However, enhanced digital capabilities should not come at the cost of a user's legal right to access, nor should fair use protections be dependent on format.

As a business librarian, I work with vendors regularly to negotiate licenses for access to electronic resources. Some vendors are aggregators of information; some are original creators; and some are both. Sometimes they call on me to help them decide on what information to include in their databases, which I am glad to do as a professional courtesy and to further the interests of my library customers. Some of them just try to sell me their products. All of them, however, charge me for the end result.

With many of these vendors, we come to an agreement that we can both live with. As I work in a public university, I seek contractual uses for faculty, students, staff, and “walk-ins.” I am, however, dependent on vendors’ accommodations for some of these access rights, and there have been some occasions where I have not been successful. Sometimes restrictions are related to who can use the database; sometimes, the database can be used for teaching, but not research, in an environment where the two are so

intertwined they should be seamless; and sometimes, the vendor permits information to be used in class, but not for projects. Further, we assume fair use rights, but often, the original contract explicitly prohibits such use, and we have to negotiate that as well.

Within this licensing environment, negotiation between the interested parties is still relatively open. Once contracts are signed, technological protection measures are cleared by the vendor to make the product available. As was described by David Mirshin, representing SilverPlatter, librarians and vendors have worked for years with passwords and other technological protection measures. Librarians are concerned that if Section 1201(a) is implemented without an exemption, existing problems with negotiations will be even more difficult to resolve. Moreover, vendors will then have the strength of criminal penalties to enforce their contracts.

For example, we have faced situations where we pay for the use of a database but, through the course of the year's contract, information in the database disappears. Sometimes we're told; sometimes we're not. The vendor will ascribe this to a publisher decision. Regardless of the reason, we do not get a refund, and we have lost the information.

There are several problems here:

- The database is paid for with public money and the public sometimes gets no access.

- We rent this information because we can't buy it, which means we pay for it over and over again. Should we be unable to pay at some point, we have nothing, not even the years we paid for.
- Content is not guaranteed, even through the life of the contract.
- Vendors are generally unable to supply or guarantee that information will be archived.
- Vendors, on occasion, choose to examine our activity and exercise controls without discussion or question. What happens when the vendor can "visit" simply by examining our computer activity?

My next example comes from my private life. My brother-in-law is co-principal at an inner city Detroit school. The budget for the little library in his school is \$500 for the year, money that comes from Title VI. His librarian buys a few magazines, a couple of other items, and relies on donations of material from other sources. According to him, "it seems to work." If he weren't going to retire this year, I would suggest that he's probably in for a surprise. I could donate some books or old journals to his library through the right of first sale, but what do I do with electronic information? What do these students do as they fall farther behind the digital divide? If technological measures are applied so tightly that libraries cannot exercise first sale rights, smaller libraries with restrictive budgets will suffer disproportionately.

It is obvious that our environment is changing rapidly. Access, use and content are integrated in a way they haven't been in the past. As a result, we have polarization

between those seeking control of their products and those who need access, and we have growing distrust among these various groups and the individuals within them.

We are not finished with this technological revolution. Until we are farther along, we cannot afford to introduce restrictions that will damage the abilities of each of us to access information for the legitimate purposes of learning and creating new knowledge. We need to work together to create the technological means that will maintain the balance inherent in the original concept of copyright. To tip the balance too much in any one direction will deter our efforts to learn and create new knowledge, and will not provide the incentive for us to work together, nor to continue developing technology for the best interests of all.

Thank you again for this opportunity to speak.