



THE SOCIETY of
AMERICAN ARCHIVISTS

October 17, 2001

Attn. Velica Steadman
Director
Box 4, United States Patent and Trademark Office
Washington, DC 20231
Via Fax to (703) 305-8885

RE: FR Doc. 01-20916, August 17, 2001

Dear Director:

On behalf of the Society of American Archivists (SAA), I write to provide comments on the Hague Convention on Jurisdiction and Foreign Judgements in Commercial and Civil Cases. The SAA, as the largest archival association in the world, with 3,500 individual and institutional members, promotes public and scholarly access to historical information. Our particular concerns with the draft Hague Convention concern negative consequences for United States citizens if matters of copyright law are included in the final Convention.

American copyright law is unique in its basis in Constitutional privileges (Article I, Section 8) provided to authors and users of copyrighted materials. Through over two centuries of legislation and judicial interpretations, Americans have achieved an enviable position of a copyright law that provides protections for authors as well as for users, including all citizens. Furthermore, American courts have repeatedly issued opinions which balance authors' property rights in works with users' constitutional free speech and creative rights. Examples such as the Napster or the Sklyarov cases illustrate that the correct balance cannot always be achieved with the first court ruling, but U.S. courts are the only body that can interpret and uphold American rights to copyrighted material.

As curators of manuscript and unpublished material, which can benefit the public in myriad ways, we are very proud of the broad contours of American copyright law. This is why we have grave concerns about the approach of some other nations, for example those whose continental legal traditions employ the notion of "moral rights" in copyright law to prevent the use of unpublished material and thereby censor history. Existing international treaties and organizations, such as the Berne Convention and the World Intellectual Property Organization, are a more appropriate way to deal with the harmonization of copyright law than the Hague Convention's unsophisticated retrofitting of an enforcement mechanism.

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Therefore, in negotiations of the Hague Convention we believe it best for Americans if copyright can be specifically excluded from the final document. Failing that, we believe that the final document needs to guarantee that American rights, such as fair use, library and archival copying privileges, and first sale rights need to be specifically protected. Further, we believe that the exclusive rights of copyright holders should not be allowed to expand beyond those stipulated in Section 106 of U.S. Title 17.

We would be pleased to provide further explanation of these matters if you desire.

Sincerely yours,



Steven L. Hensen
President, Society of American Archivists