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Tributes to Robert W. Kastenmeier

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## ROBERT W. KASTENMEIER: ENDURING IMPRINT ON COPYRIGHT LAW

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Robert W. Kastenmeier made an indelible imprint in the copyright world, introducing a variety of laws and overseeing hearings to better meet the challenges of the dynamic copyright law. As chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice<sup>1</sup> from the 1960s through 1991, Kastenmeier authored twenty-one laws amending the Copyright Act, and it is impossible not to be struck by the scale of his legislative influence.

Among these accomplishments, Representative Kastenmeier introduced two copyright laws that truly reshaped American copyright law, the Copyright Revision Act of 1976 and the Berne Convention Implementation Act of 1988. When Kastenmeier was first elected to Congress, he was not known for involvement in copyright matters. But, as fate would have it, he was asked in the early 1960s to chair a series of hearings on possible revisions to the 1909 Copyright Act, which ultimately led to the passage of the 1976 Copyright Act. The revision process had actually begun in 1955, when Congress authorized the Copyright Office to undertake a series of studies on copyright as it stood under the 1909 Copyright Act. When Kastenmeier chaired the

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1. Today, the Subcommittee goes by the name "Courts, Intellectual Property, and the Internet." During Representative Kastenmeier's tenure as Chairman, the name was changed from "Courts, Civil Liberties, and the Administration of Justice" to "Courts, Intellectual Property, and the Administration of Justice," reflecting, in his own words, "the legislative importance of copyrights, patents, trademarks and semiconductor mask works to our society." Robert W. Kastenmeier, *The 1989 Horace S. Manges Lecture—"Copyright in an Era of Technological Change: A Political Perspective,"* 14 COLUM.-VLA J. L. & ARTS 1, 1 (1989).

first hearings in 1965, he already had a substantial body of material to work from. But attempts at revising the outdated 1909 Copyright Act had failed before, and so when Kastenmeier chaired twenty-two days of hearings in 1965, it was not clear at the time that those hearings would lead to a major piece of legislation. Kastenmeier's leadership did much to facilitate the ultimate passage of the Copyright Act of 1976. Later reflecting on the efforts leading up to the 1976 Act, Kastenmeier noted that "[s]uccessful enactment of the 1976 Act manifested a strong congressional feeling that substantive reforms should be enacted only after hearing and accommodating the views, of all interest groups with a substantial stake in the outcome."<sup>2</sup> It was largely due to Kastenmeier's abilities as a politician—as a listener, observer, and dealmaker—that the groundwork the Copyright Office laid through its studies ultimately led to the most significant overhaul of the nation's copyright laws in the twentieth century and the passage of the 1976 Copyright Act.

The Berne Convention Implementation Act also highlights Kastenmeier's impact on copyright law. The Berne Convention is the preeminent international copyright treaty, which was first adopted in 1886. Despite being a world leader on the copyright scene, the United States had not joined the treaty even a hundred years later. The cost of inadherence was not lost on Representative Kastenmeier. Opening what was the first House hearing on Berne implementing legislation since 1936, Kastenmeier explained the stakes: most of the industrialized world adhered to the Convention, and with ongoing debates surrounding trade in the background, "U.S. adherence to the Berne Convention is potentially the most important intellectual property issue to be considered by the 100th Congress."<sup>3</sup> The goal of adherence was not without its critics, however. Some witnesses at the hearings expressed concerns about changes that might be required in the U.S. Copyright Act. The genius of Kastenmeier's approach to this issue, as then-Register of Copyrights Ralph Oman later explained, was in his minimalist approach. Through two days of foreign consultations with the World Intellectual Property Organization (which oversees the Berne Convention and many other intellectual property treaties), Kastenmeier and the Subcommittee learned that the requirements of membership

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2. *Id.* at 7.

3. *Berne Convention Implementation Act of 1987: Hearing on H.R. 1623 Before the Subcomm. on Courts, Civil Liberties & the Admin. of Justice*, 100th Cong. 1 (1987) (statement of Rep. Robert W. Kastenmeier, Chairman, Subcomm. on Courts, Civil Liberties & the Admin. of Justice).

were really fairly low. By pushing only what was truly necessary, Kastenmeier was able to address domestic opposition, which otherwise would have overwhelmed the first effort in over fifty years to bring the United States into the Berne Convention. Thus, in 1988, Congress finally passed a law to implement the treaty in the United States.

Last year, I had the pleasure of communicating with Mr. Kastenmeier briefly, through his trusted friend and former legislative counsel, Mike Remington. I thanked him for his principled leadership as Chairman and for a copyright legacy that is still respected and admired forty years later. Before he died, Mr. Kastenmeier sent me his personal copy of the 1965 Copyright Law Revision hearings, which occupies a prominent place near my desk. As my staff and I support the Congress in its first comprehensive review of our nation's copyright laws in nearly forty years, the gift serves as inspiration. We would do well to follow his example as we consider what the nation needs in a twenty-first century Copyright Act, and how we ought to bring about those changes.