

**ONE PAGE SUMMARY OF THE
TESTIMONY OF KEITH KUPFERSCHMID
ON BEHALF OF THE SOFTWARE & INFORMATION INDUSTRY ASSOCIATION
ON THE REPORT TO CONGRESS PURSUANT TO SECTION 104 OF THE DMCA
BEFORE THE U.S. COPYRIGHT OFFICE AND NTIA**

November 29, 2000

SIIA is the principal trade association of the software and information industry and represents over 1,000 high-tech companies that develop and market software and electronic content for business, education, consumers, the Internet, and entertainment. SIIA and our members are extremely interested in issues relating to the interplay between new technologies, e-commerce and the copyright law.

With regard to the first sale doctrine, section 109 of the Copyright Act, SIIA strongly believes that no change to the language of section 109 is appropriate. Not only is such a change unwarranted, but even if one were to proffer some good reason for changing the scope of section 109, we assert that it is much too early in the development of e-commerce and business models are evolving much too rapidly to make any changes in section 109 at this time. In particular, the so-called simultaneous destruction proposal suggested by some of the commentators ignores too many evidentiary and practical considerations to warrant any serious consideration.

SIIA strongly urges the Copyright Office and NTIA to reaffirm the status quo by making clear in the Section 104 Report that: (1) the first sale exception does not apply to digital distribution mechanisms such as the Internet; and (2) given the Congressional intent underlying the first sale exception and the ease by which consumers have and will have access to a wider variety of copyrighted works that ever before, it would be inappropriate to expand the first sale exception into the digital distribution environment.

With regard to section 117, SIIA strongly believes that there is an immediate and important need for the public to be educated as to the scope and effect of section 117. All too often, we have become aware of persons engaged in software and content piracy who are attempting to use section 117 as a way of legitimizing their piratical activities. The days of people using section 117 as an excuse for software and content piracy must come to an end. The only way to do this is through a systematic and sweeping process of educating the public on the "dos and don'ts" of section 117 (as well as other provisions of copyright law) conducted by the Copyright Office and the Administration.

Section 117 was enacted at a time when the need to make a back up copy of your software was essential. Technology and business models have evolved to a point where the need for the provisions in section 117 relating to the making of a back-up copy of your software no longer exist. Moreover, it seems senseless to expand section 117 to other copyrighted works when it is being used so sparingly today for computer software and the justification for the provision no longer exists.