

Summary of Intended Testimony of

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on behalf of

MOTION PICTURE ASSOCIATION OF AMERICA

Section 104 of the Digital Millennium Copyright Act (DMCA) directs the Register of Copyrights and the Assistant Secretary for Communications and Information to jointly evaluate and report to Congress on:

1. the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and
2. the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

This testimony addresses only section 109 of the Copyright Act, commonly referred to as the First Sale Doctrine.

Based on the record assembled in this proceeding, the Register and Assistant Secretary can come to only one clear and simple conclusion. That is, the DMCA and the development of electronic commerce have had no effect on the operation of the First Sale Doctrine, and the relationship between existing and emergent technology and the operation of the First Sale Doctrine is in harmony.

No evidence has been presented in this proceeding that would support any other conclusion. Those who demand that the DMCA be reopened and the First Sale Doctrine be amended offer as support only speculation about what future technology and marketing practices may (or may not) develop, and possible (and often impossible) hypothetical conflicts that could arise. Only time will tell whether any of this speculation is ever proven accurate. In the mean time, the duty of the Register and Assistant Secretary is to report what is known today, and what is known today is that the First Sale Doctrine is operating as it was intended and there is no demonstrated conflict, or even friction, between the implementation of the DMCA in the new electronic commerce environment and the exercise of the First Sale Doctrine.

Proposals to amend the First Sale Doctrine along the lines of section 4 of H.R. 3048, 105th Congress, are completely without justification and, more importantly, would not simply "modify" the First Sale Doctrine in light of the new technological environment. They would totally transform the First Sale Doctrine from a narrow limitation on the distribution right of copyright owners, to a broad constriction of the rights of copyright owners, including both the distribution right and the reproduction right. Such a major slashing of the rights of copyright owners would have a disastrous, adverse impact on the incentive to create copyrighted works, which is a primary purpose of the Copyright Act.

November 22, 2000