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TESTIMONY OF ARTHUR J. LEVINE
BEFORE THE HOUSE OF REPRESENTATIVES,
JUDICIARY COMMITTEE, SUBCOMMITTEE ON
COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE

Mr. Chairman and Members of the Subcommittee.

My name is Arthur J. Levine. I am a member of the Washington, D.C. law firm of Spencer & Kaye. From October 1975 through September 1978, I was Executive Director of the National Commission on New Technological Uses of Copyrighted Works ("CONTU"). I appear before you today to support legislation implementing the recommendations of CONTU.

In 1967, when Congress was considering the revision of the 1909 Copyright Act, it was hoped by those involved that the remedial legislation would be enacted expeditiously and become law in 1967. In fact, as you well know, Mr. Chairman, under your leadership the House of Representatives, in April 1967, voted in favor of a copyright revision bill.

It became apparent, however, that the issues raised by computer uses of copyrighted material had not been addressed directly in the pending legislation, and it was feared that any adequate study of the computer problems would seriously delay enactment of the general copyright revision bill. In order both to move ahead with copyright revision and to treat the issues raised by computer uses adequately, Congress took two steps. First, pending legislation was amended to include Section 117, which froze the law on computer uses of copyrighted

material as of the date of enactment of the new copyright law, and was ultimately incorporated in PL 94-553 (1976). Section 117 reads as follows:

Notwithstanding the provisions of sections 106 through 116 and 118, this title does not afford to the owner of copyright in a work any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title....

Second, in addition to so freezing the law, Congress introduced legislation to create a commission to study computer uses of copyrighted material, CONTU.

The CONTU bill was signed into law by President Ford on December 31, 1974 (PL 93-573 (1974)). Commissioners were selected from three distinct groups: (1) authors and other copyright owners, (2) users of the works, and (3) members of the public generally, one of whom was to be selected from among experts in consumer protection affairs. President Ford selected a distinguished group of commissioners. From authors and other copyright owners, John Hersey, President of the Authors League of America; Dan Lacy, Senior Vice President, McGraw-Hill, Inc.; E. Gabriel Perle, Vice President-Law, Time, Inc.; Hershel B. Sarbin, President, Ziff-Davis Publishing Co. From copyright users, William S. Dix, Librarian Emeritus, Princeton University (Commissioner Dix died on February 22,

1978); Arthur R. Miller, Professor of Law, Harvard Law School; Robert Wedgeworth, Executive Director, American Library Association; Alice E. Wilcox, Director, Minnesota Interlibrary Telecommunications Exchange. From the public, George D. Cary, retired Register of Copyrights; Stanley H. Fuld, retired Chief Judge of the State of New York Court of Appeals; Rhoda H. Karpatkin, Executive Director, Consumers' Union; Melvin B. Nimmer, Professor of Law, UCLA Law School. Judge Fuld and Professor Nimmer were designated chairman and vice-chairman of the Commission, respectively. The Librarian of Congress and the Register of Copyrights were ex-officio members of the Commission. Of these two, only the Librarian of Congress had a vote in Commission matters.

The Commission held some 23 meetings and hearings over the course of approximately 41 days from October 1975 through July 1978. At those hearings, more than 100 persons, representing a diverse cross-section of interests, presented testimony to CONTU. As a result of those hearings, as well as staff research reports and Commission studies, the Commission submitted its final report to both the President and the Congress on July 31, 1978.

Mr. Chairman, in my opinion, as former Executive Director of the Commission, H.R. 6934 embodies the recommendations of CONTU on the protection of computer programs. The Commission, after concluding its study, recommended that the Copyright Act

of 1976 be amended (1) to make explicit that computer programs, to the extent that they embody an author's original creation, are a proper subject matter of copyright; (2) to apply to all computer uses of copyrighted programs by the deletion of the present Section 117 of Title 17; and (3) to ensure that rightful possessors of copies of computer programs be allowed to use or adapt the copies for their use. H.R. 6934 accomplishes those objectives and I believe that those objectives are in the public interest.

Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to present this testimony and I will be pleased to answer any questions which you may have.