



LAW DEPARTMENT
Washington, DC 20260

July 20, 1976

Dr. Betsy Ancker-Johnson
Chairman, Committee on Government
Patent Policy
Federal Council for Science and Technology

Attn: Mr. O. A. Neumann
Executive Secretary
Suite 620, Pennsylvania Bldg.
425 13th Street, N.W.
Washington, D.C. 20004

Dear Dr. Ancker-Johnson:

This responds to your request for the comments of the Postal Service on the Executive Subcommittee's July 2, 1976, draft bill to establish a national intellectual property policy.

As drafted, the bill, like most present general Federal property laws, does not apply to the Postal Service. §511(a), (b); 5 U.S.C. §§104, 105, 2105(e), 39 U.S.C. §410(a). We believe that this approach is necessary in order to be consistent with the present responsibilities of the Postal Service, an independent agency largely independently financed, with property management and self-sufficiency goals that differ from those of most other agencies. In keeping with these responsibilities, we have established a patent policy, with which your Committee is familiar, that differs from the present policy of most agencies and from the proposed statute in important respects. In addition, unlike other agencies, we have programs to manage copyrights secured for postal literary property works. See, e.g., S. Rep. No. 94-473, 94th Cong., 2d Sess. 57 (1976).

Despite these differences, we would want to work closely with the proposed Federal Coordinating Council for Intellectual Property to cooperate with and assist the Council and represented agencies in achieving mutual aims. We welcome the policy finding of proposed §101(c) that the public interest requires greater efforts by the Government toward patent protection. We would be happy to provide any information that the Council might find useful about our own experience in the active management of intellectual property created by Government contracts.

In order to assure closer coordination between the proposed Council and the Postal Service, it might be appropriate at some point for the two entities to enter into a formal agreement concerning their intellectual property programs. For example, the Committee and the Postal Service in the past have discussed mutual arrangements between member agencies and the Postal Service for the reservation of non-exclusive licenses for all agencies. As a technical matter, however, it appears to us that there might be some doubt as to the authority of the Postal Service and the proposed Council to enter such an agreement. Represented agencies may deal with the Postal Service individually under the authority of 39 U.S.C. §411, which authorizes the provision of services or transfer of property between the Postal Service and "executive agencies" as defined in 5 U.S.C. §105. However, it is not clear that the proposed Council would be an executive agency under that section.

The Postal Service would recommend that the Committee consider clarifying the bill to establish that the Council and the Postal Service may enter into formal arrangements with each other. An appropriate amendment might be to provide that the Council shall be deemed an executive agency for purposes of 39 U.S.C. §411.

Sincerely,



W. Allen Sanders
Assistant General Counsel
Legislative Division