

November 1, 2002

Senator Thomas A. Daschle
Majority Leader
United States Senate
S-221 Capitol Building
Washington, D.C. 20510-7020

Re. S. 2395, the Anticounterfeiting Amendments of 2002

Dear Senator Daschle:

The undersigned organizations, which represent a broad array of educational institutions, libraries, consumer and public interest organizations, technology and consumer electronics companies, telecommunications providers, Internet services, and retailers, wish to express their serious concerns about S. 2395, the Anticounterfeiting Amendments of 2002. We strongly oppose the Senate considering this legislation during the remainder of this session of Congress, either as a stand-alone bill or as an amendment to other legislation.

When introduced, the stated objective of S. 2395 was to “target organized criminal counterfeiting enterprises” by extending existing anticounterfeiting laws to physical holograms placed on packaging or embedded in the face of CDs, DVDs, and computer programs. Additionally, S.2395 was intended to improve enforcement of the criminal anticounterfeiting provisions by granting a private cause of action.

However, as reported out of the Senate Judiciary Committee without hearings, S. 2395 has a much broader scope than originally proposed. It now applies to digital watermarks, so that the otherwise lawful copying and transmitting of digital works could trigger liability under S. 2395. This means that S. 2395 places an additional layer of criminal and civil liability on top of activities currently regulated by the Copyright Act. Thus, this new legislative overlay prohibits activity specifically permitted by the copyright law and imposes significantly higher penalties for technical copyright infringements.

In particular, S. 2395 could prevent universities, libraries, and consumers from enjoying the exceptions to the Copyright Act adopted by Congress. It also implicates the database protection issue that has been vigorously debated for the past four Congresses and thus threatens a wide range of economic activity and scientific research. S. 2395 could prohibit the use of interface information essential for software interoperability and competition. It could impose new responsibilities on Internet service providers beyond those provided for in the Digital Millennium Copyright Act. It could also require consumer electronics and computer manufacturers to reconfigure their products to respect instructions contained in digital watermarks and prevent retailers from selling noninfringing products. Finally, this legislation would impose more severe criminal and civil penalties than permitted by the Copyright Act for identical behavior.

In the weeks since the Senate Judiciary Committee reported the bill, the affected parties have engaged in good faith negotiations in an effort to bridge their differences. While some progress has been made, many problems remain. For this reason, Congressman Lamar Smith, the sponsor of the companion bill to S. 2395 in the House of Representatives, determined that further consideration of this legislation should be deferred until the 108th Congress.

Given that the negotiations have failed to resolve many of the problems with the legislation, and given that the House sponsor has concluded that these problems are sufficiently troubling to warrant deferral until the next Congress, we believe that the Senate should not consider this legislation in the remainder of this session, either on a stand-alone basis or as an amendment to other legislation.

Respectfully,

American Association of Law Libraries
American Library Association
Association of American Universities
Association of Research Libraries
Computer & Communications Industry Association
Consumer Electronics Association
DigitalConsumer.org
Digital Future Coalition
Electronic Frontier Foundation
Medical Library Association
National Association of Recording Merchandisers
Public Knowledge
Special Libraries Association

cc: Senator Trent Lott