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February 11, 1999

Hon. Orrin G. Hatch  
Chairman, Committee on the Judiciary  
Washington, D.C. 20510-6275

RE: Collections of Information Antipiracy Act

Dear Senator Hatch:

I am one of the 2 lead attorneys who litigated the successful recent copyright case against West Publishing in the Southern District of New York and the Second Circuit. Yesterday (on February 10, 1999) West represented to Judge John S. Martin, SDNY, that West will seek certiorari to the U.S. Supreme Court on both issues therein.

I thank you for your kind and thoughtful letter of January 25, 1999 on this subject--and would like to point out several additional facts with regard to the attempts by the two major, foreign corporations involved--to effectively monopolize access to U.S. Law. CNET reported:

Rep. Howard Coble (R-North Carolina) and Sen. Orrin Hatch (R-Utah) are once again spearheading legislation to protect the "brow sweat" and deep pockets of database creators and publishers, such as WestLaw, Reed Elsevier, which owns major periodicals, and Lexis-Nexis.

"Developing, compiling, distributing, and maintaining commercially significant collections requires substantial investments of time, personnel, and money," Coble said on the House floor last month when he reintroduced the Collections of Information Antipiracy Act. "The bottom line is clear: it is time to consider new federal legislation to protect developers who place their materials in interstate commerce against piracy and unfair competition."

I ask that whatever is finally enacted have a "carve-out" provision to except all federal and state law before 1995--the year that it first became clear that West and others were claiming a copyright in the text part of judicial decisions actually authored by judges. See the two Second Circuit decisions (both titled MATTHEW BENDER & COMPANY, INC. and HYPERLAW, INC. v. WEST PUBLISHING CO., at 158 F.3d 693 (page numbers) and 158 F.3d 674 (text of judges opinions)--both just decided on November 3, 1998.

I want to make it clear that West and other publishers are not seeking to "protect" just their headnotes, key numbers and summaries-- but, rather, the actual text of decisions written by judges of federal and state courts. In the action before the SDNY, West took the position that it had a copyright on the opinion part of the reports in its Supreme Court Reporters, Federal Reporters and Federal Supplements. It also claimed a copyright in the citations--the page numbering references. The Court found otherwise--as did the Second Circuit.

The effect of giving some sort of "super-protection" to two companies which are owned by foreign giants will to be monopolize the law--for in many cases, the only valid copies of those cases "belong" to West or Lexis.

I implore you to carve out this exception. Moreover, I implore you to look into the secret agreements between West and Lexis which originated in the late 80's -- and which both have referred to in court proceedings the 90's--but which remain secret. These were agreements for the control of "Caselaw" and "Statutes". They have resulted in a two entity industry, where two giants control all of the major on-line access to the law, and a good deal of the book-based research.

I would propose the following language:

Excepted from these provisions are the judicial opinion portion and citations to any collection of federal, state, or administrative case law; and the governmentally authored portions of, and citations to collections of state and federal statutes, codes and regulations.

Please do not give these corporations ownership of U.S. law. Please do not increase the cost of access to the law by more than 400% by creating a protected monopoly that was gained in a way which you do not understand. At the very least, cut this portion out into a separate bill--and allow a year for full and knowledgeable discussion by the public, lawyers and judges. The Congress should know (1) how these companies originally obtained many of these cases, (2) the decision of Judge Martin with regard to alleged threats by West, and (3) the methods used to influence decision-makers regarding access to these materials.

Sincerely,

A handwritten signature in cursive script, reading "Carl J. Hartmann", written in black ink. The signature is positioned above a solid horizontal line.

Carl J. Hartmann