

Pursuant to the Federal Register notice of October 24, 2000 (65 Fed. Reg. 63626), I submit the following request to testify at the public hearing on November 29, 2000:

1. Name: Emery Simon
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Attached please find the one-page summary of testimony requested in the Notice. This request is made without prejudice to the ability of any of the member companies of the BSA to testify in their own right pursuant to a separate request. Thank you for your consideration of this request.

Emery Simon

Summary of Intended Testimony of

Emery Simon

on behalf of

The BUSINESS SOFTWARE ALLIANCE

November 22, 2000

The member companies of the Business Software Alliance do not support amending either section 109 or section 117 of the Copyright Act. The first sale doctrine continues to apply with full force in the digital environment. The

backup and archival copying provisions of section 117 were recently amended by the Congress to address one issue: the status of RAM copies made in the course repair or maintenance. We believe that no other changes to this section are justified.

Certain of the written comments advocate extending first sale doctrine and imposing completely new limitations on other exclusive rights long enjoyed by copyright owners, notably the reproduction right. Such amendments would distort the development of electronic commerce in copyrighted materials, and threaten to facilitate piracy.

Other written comments recommended amending section 117 to enlarge the its scope. We oppose such changes. The Digital Millennium Copyright Act amended section 117, with the effect of reaffirming the long-standing principle that copies, regardless of their temporal duration, of computer programs made in the memory of a computer fall within the scope of the copyright owner's exclusive reproduction right.

Copyright protection against unauthorized "temporary copying" is crucial to ensure a healthy environment for the development of the software industry and e-commerce. It is the cornerstone of effective protection against unauthorized exploitation of a work in the digital, networked environment.

The phenomenal growth of the Internet and other digital networks offers tremendous possibilities for the development, enjoyment, use and commercial exploitation of all types of copyrighted works. For well over 100 years, international copyright law has been based on the premise that authors and other copyright holders must be given the ability to control the copying and distribution of their works to establish the necessary incentives to create new works. This bedrock principle is just as applicable in the new digital, networked environment as it has been in the physical world since the 1800's.

The current application of this principle requires recognition of the fact that "reproduction" involves the creation of copies of many forms made through a range of mechanisms. Thirty years ago, copies invariably took a physical form. With the creation of digital technologies and computer networks an individual now has the choice of exploiting a work through the use of physical copies or temporary digital copies. From the user's perspective these formats are indistinguishable, except that the exploitation of a work through the creation of a temporary digital copy may be far more convenient, enjoyable, and even less expensive than the exploitation of the work in physical format. There is no question that the exploitation of works will increasingly be through the creation of digital temporary copies as opposed to the creation of permanent copies.

