



April 5, 2022

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
S-221 U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
S-230 U.S. Capitol
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, D.C. 20515

RE: Copyright Concerns With Public Access Language in U.S. Innovation and Competition Act - Section 2527(b)

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, and Leader McCarthy:

We write to express our serious concerns about Section 2527(b) of the United States Innovation and Competition Act of 2021 (“USICA,” S. 1260). Instead of supporting American innovation and competitiveness, this provision—which addresses public access requirements for certain copyrighted works that discuss federally funded research—would undermine copyright protection and weaken American intellectual property exports, ultimately impeding the commercialization of research and stifling American competitiveness.

We understand that this language remained in the Senate-passed USICA last year largely because of procedural challenges with amending the bill following its introduction. We were grateful that this language was not included in the House’s America COMPETES Act 2022 (“COMPETES,” H.R. 4521), and we urge you to ensure that Section 2527(b) of USICA is not included in the final legislation following a conference on these two bills.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

Section 2527(b) was added to USICA after the bill had already been reported out of committee, and without any discussion or engagement either in committee or with copyright industry stakeholders. The last time the language in Section 2527(b) had seen the light of day—when it was introduced as a standalone bill (the Fair Access to Science and Technology Research Act) four years ago in the 115th Congress—it was roundly criticized and opposed by dozens of non-profit scientific and medical societies and professional associations, as well as publishers, and it was subsequently never considered by any committee in Congress.¹

The language in Section 2527(b) of USICA contains several provisions that would undermine copyright protection through unreasonable licensing requirements (including an unprecedented license for reuse and mining of copyrighted works) and by encouraging agencies to compel free online distribution of copyrighted journal articles earlier than one year after publication, contrary to standard practice today.

While we fully support public access to research reports and raw data that is generated from publicly funded research, and generally support flexible public access policies that enable sustainable investments in producing and disseminating copyrighted peer-reviewed journal articles, the public access language in Section 2527(b) would significantly weaken the copyright protection that lies at the core of such investments.

The fundamental premise of copyright is that marketable rights in producing informative and creative works enable individuals and organizations to produce and disseminate those works broadly. By undermining copyright protection, Section 2527(b) of USICA would reduce the incentive to invest in publishing high-quality scientific and medical journals. As a result, it would reduce the benefit the public derives from these important copyrighted works, including critical benefits in scientific and medical communication that improve patient care and advance science, research, and knowledge. This is especially problematic as the world continues to grapple with a global pandemic, and high-quality, validated, scientific and medical journals are more important than ever.

Furthermore, copyrighted products are one of our nation's top exports, and American peer-reviewed journals are an important part of this. Readers around the world turn to American research journals because they represent the highest quality and uphold core values of scientific integrity and freedom of speech. They are licensed in hundreds of foreign countries, generating billions of dollars in U.S. exports and contributing positively to our balance of trade. By weakening copyright protection for these important works, the public access language in Section 2527(b) of USICA would undermine those exports.

While USICA and COMPETES seek to promote commercialization of research and protection of American intellectual property to enhance our nation's competitiveness, Section 2527(b) of USICA would paradoxically undermine American intellectual property and disrupt our vibrant commercialization ecosystem for copyrighted works.

¹ See enclosed January 15, 2018 letter from 78 organizations in opposition to the Fair Access to Science and Technology Research Act.

The Copyright Alliance and our members remain committed to working with you and others to ensure that the results of publicly funded research are made broadly accessible to the public in a way that respects and does not undermine the copyright system. Publishers have made great strides in making scientific and medical journals more openly accessible in recent years, but Section 2527(b) of USICA threatens to upend these efforts by disrupting the copyright system and marketplace in a way that makes no fiscal or policy sense.

In order to prevent the legislation from unintentionally undermining our world-leading copyright system and intellectual property exports, we urge you to ensure that Section 2527(b) of USICA is not included in the final USICA-COMPETES conferenced bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kupferschmid', with a long horizontal flourish extending to the right.

Keith Kupferschmid
CEO
Copyright Alliance