Welcoming Remarks of the Hon. Marybeth Peters, United States Register of Copyrights

Mr. President, Distinguished Guests, Ladies and Gentlemen, as the United States Register of Copyrights and the Director of the U.S. Copyright Office, it gives me great pleasure to welcome you to the ALAI 2001 Congress--the first ever to take place in the United States, in New York City, our most dynamic and largest city, and at Columbia University Law School, the premier institution for the study of copyright and related rights..

The focus of this conference, Adjuncts and Alternatives to Copyright, is most timely and extremely important to me because of the role given to the Copyright Office in the Digital Millennium Copyright Act of 1998 (the DMCA). Indeed, some of the issues are ones that I have struggled with over the past year. Title I of the DMCA (which added sections 1201-1205 to Title 17 of the U.S. Code) implements the WIPO Copyright and the WIPO Performances and Phonograms Treaties. As you know, both treaties require that parties to the treaties provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures used by copyright owners to prevent unauthorized use of their works. Section 1201 reflects the decision of United States to focus on keeping circumvention tools out of the hands of individual users by outlawing devices and services that 1) are primarily designed or produced to circumvent measures that protect rights under copyright; 2) have only limited commercially significant purpose or use other than to circumvent, or 3) are marketed for use in circumventing. However, the U.S. also decided to deal with unauthorized *access* to copyrighted works. Section 1201(a) prohibits the act of circumventing access controls. This provision was extremely controversial, and a number of cutbacks were added to the language of the bill in the waning days of the 105th Congress. One was to delay the effective date of this provision until October 28, 2000. Others took the form of exceptions, the broadest of which establishes an ongoing administrative rulemaking proceeding in the Copyright Office. Specifically the Office is charged with evaluating the impact of the prohibition–the issue is whether the law adversely affects (or is likely to adversely affect) the ability of users of particular classes of copyrighted works to make noninfringing uses of those works during a specified three year period, e.g., October 28, 2000-October 27, 2003. The Office makes a recommendation to the Librarian of Congress who makes the determination of whether to exempt any particular classes of works. In making her recommendation, the Register of Copyrights is required to consult with the National Telecommunications and Information Administration, an agency within the department of Commerce.

This rulemaking effort was most challenging and interesting; it also resulted in a few firsts for the Copyright Office. One day in January, 2000, in response to our request for public comment, we started to receive a very significant amount of e-mail traffic from all over the country. It came from individuals and companies that normally do not participate in Copyright Office activities. On investigation we learned that the website 2600, the Hacker Quarterly, and the Electronic Freedom Foundation appeared to be recommending that readers of their sites write to the Office suggesting that the Office rewrite the DMCA or repeal it (clearly tasks beyond our authority). Some of what we initially received did not appear to be intended for public consumption, and we quickly moved to put in place procedures that made it clear that all comments would be posted on our website and would be officially made part of the rulemaking. There were many interesting but not relevant comments; for example, "I have to say that in a strange way I'm thankful for the DMCA. I couldn't have asked for a

more extreme measure that would have effectively radicalized thousands of people about the stupidity of intellectual property."

Another first was picketing. For the first time there were protesters at an activity of the Copyright Office. In Washington, D.C. they carried placards bearing the picture of the Norwegian teenager who broke the code on DVDs, and a message to free him (although, to my knowledge, he had not been incarcerated). Teeshirts with the teenager's code that broke the encryption scheme were worn by the demonstrators and given to members of the public in attendance. At our hearing in Palo Alto, California, the protest was against the Motion Picture Association of America (MPAA), an organization associated with the DVD encryption that protected the content on the DVDs. There were large signs which bore "MPAA" crossed out; bumper stickers with the same message were given to the public. Obviously, the message was wipe out or eradicate the MPAA.

At the end of our extensive comment periods and public hearings, we recommended to the Librarian of Congress two very limited classes of works; he accepted our recommendation and exempted those classes. At the end of the day we drew ire from librarians, educators who were unhappy with the end result although most of their complaints during our formal process focused on copy controls and terms and conditions of licenses. Copyright owners weren't happy either.

We get to do this again . The next round of exceptions must be published by October 27, 2003; these exceptions will cover the period October 28, 2003 to October 27, 2006. The process for this will begin in 2002.

With an eye toward 2002, I therefore look forward to learning a great deal in these three days. This is a terrific program, which is the result of exceptional efforts on the part of the organizers, especially, Jane Ginsburg, June Besek and Adria Kaplan of Columbia University School of Law, and on the part of the speakers. I know we will be stimulated by the speeches and discussions, enjoy the comraderie of the participants, and leave better informed.

Thank you.