



News and information for providers of assessment products and services from the Association of Test Publishers ("ATP")

Volume 5, Number 3

Fall 1998

©1998 Association of Test Publishers

Inside this issue

[Test publishers remove harmful parental access provision from copyright legislation](#)

[Legal/Legislative Update - Fair access alert](#)

[Vollman defends ALMIS as catalyst for opportunity](#)

[Focus on European Test Publishers](#)

Test publishers remove harmful "parental access" provision from copyright legislation...by Alan Thiemann, Legislative Counsel

Responding quickly to an eleventh hour harmful amendment to the Digital Millennium Copyright Act (HR 2281), that would have granted broad access rights to parents to hack into publishers' secure tests, the Association of Test Publishers convinced House and Senate conferees to remove that language. Consequently, final conference legislation supported by most copyright owners, including the Association of American Publishers and other members of the Creative Incentive Coalition, was passed by the Senate (on October 9) and the House (on October 12). The final Conference bill, a broad effort to update existing U.S. copyright law and conform with two World Intellectual Property Organization ("WIPO") treaties, was signed into law by President Clinton in November.

In receding to the Senate version, the Conferees agreed to delete language that would have permitted parents to circumvent technological copyright protections and obtain a copy of any "test, examination, or other evaluation of a student's ability."

The provision was added without any congressional hearings or other debate. The ATP Board of Directors discussed the negative effects of the provision at their August Board meeting, and directed that every effort should be made to defeat it.

ATP argued that the provision was an attempt to indirectly amend an education statute -- the Family Education Rights and Privacy Act ("FERPA") -- and thus it did not belong as

part of a copyright bill. ATP also noted that the provision would compromise the integrity and utility of educational and diagnostic tests and essentially destroy the value of these tests, which rely on confidentiality and security to comply with key psychometric standards. Allowing broad parental access to secured tests would have enabled some students to review the questions and/or answers before subsequent administrations, thereby eliminating accurate and fair measurement and diagnosis. As a result, wholly new tests would have to be devised, thereby raising costs to school districts and states, including private and parochial schools.

Led by Executive Director William G. Harris, ATP was also assisted by representatives of Riverside Publishing, Harcourt Assessments, CTB/McGraw-Hill and Educational Testing Service ("ETS"). Members of this group called, e-mailed or met with every member of the Conference Committee or their staffs to urge deletion of the parental access provision.

Dr. Harris, commenting on ATP's successful action, noted that "Test publishers support reasonable parental access to standardized, secured tests. Good assessment procedures depend on schools sharing information with parents on how tests are being used and administered. This includes meeting with the school psychologist or counselor, district test director or other official who can show the parents the test materials, explain the purpose and use of the test as well as what the student's test results mean. However, the consultative process must not provide parents with access to walk-away copies of the test or answers, and the copyright provision would have compounded that problem by letting parents hack into publishers' computers to obtain tests and answers. ATP stressed to the Conferees the distinction between encouraging parental oversight and responding to parental concerns on the one hand, and protecting the societal and psychometric value for these necessary and useful assessments on the other."

ATP was strongly aided by the support it received from Rep. Bill Goodling, Chairman of the House Education and Workforce Committee. Chairman Goodling, after meeting with representatives of ATP, Harcourt and ETS, wrote a letter to Chairman Hyde pointing out that the parental access issue is an educational matter under his Committee's jurisdiction and requesting that the provision be dropped from the copyright bill. Further, Michael Kean, Vice-Chair of the Educational Division, and ATP's Legislative Counsel Alan Thiemann met with Rep. Ted Strickland (D-OH) to discuss the adverse impact of the language. As a result, Strickland played an important liaison role with the Ranking Minority member of the House Commerce Committee and Conferee, Rep. John Dingell (D-MI), who assisted in convincing House Conferees to recede to the Senate version of the bill. Earlier this year, ATP had successfully worked with Rep. Todd Tiahrt (R-KS) on a proposal to clarify the FERPA parental access provisions.

Despite assisting in rewriting key provisions in HR 3189, ATP was not informed when the decision was made to use the copyright bill as a vehicle to create a very different, adversarial approach giving parents "hacking rights" to school testing. It is unclear what efforts will be made to amend FERPA in the future, but ATP has told Mr. Goodling in a letter thanking him for his help on the copyright bill that test publishers stand ready to work with the Education and Workforce Committee if and when such legislation is introduced.

A memorandum summarizing the key provisions of the Digital Copyright law will be available from ATP in November. Members desiring a copy of the bill should call or write Alan Thiemann, Legislative counsel, or you may e-mail him at ajthiemann@ttalaw.com

[Legislative/Legal update...](#)

Fair access alert: Indiana State Board of Psychology proposes list of tests to be restricted...Maureen P. Toner and David W. Arnold, Esq.

In 1997, the Indiana state legislature enacted a law which would allow the Indiana State Board of Psychology ("the Board") to restrict access to tests which, in the opinion of the Board, could pose a threat to the public if administered or used improperly. This law, which became incorporated into Indiana Code ("IC") 25-33-1-3(g), empowered the Board to establish, maintain and update a list of psychological instruments that, in the words of the legislature, could create a danger to the public because of "their design and complexity" if improperly administered and interpreted by individuals other than those designated in the statute.

Within this law, the legislature further specified which individuals would be granted access to these so-called dangerous tests. Access to the instruments that are placed on this list would be restricted to all individuals other than:

- a psychologist licensed under Indiana law;
- an appropriately trained mental health provider under the direct supervision of a health service provider endorsed under Indiana law;
- a qualified physician licensed under Indiana law;
- a school psychologist who holds a valid:
 - a) license issued by the professional standards board; or
 - b) endorsement under Indiana law;
- practicing within the scope of the school psychologist's license or endorsement; or
- a minister, priest, rabbi or other member of the clergy providing pastoral counseling or other assistance.

The legislature did, however, stipulate that the group most affected by this statute, the Social Worker, Marriage and Family Therapist and Mental Health Counselor Licensure Board ("SW, MFT and MHC Licensure Board"), as well as any other interested party, may submit written comments or objections regarding a test proposed for inclusion on the list of restricted instruments within 60 days of receiving the list. The Board would review these comments and take them into consideration for an appeal of any test's inclusion on the list.

The legislature further indicated that this statute may not be interpreted to prevent licensed or certified health care professionals from practicing within the scope of their license or certification; and training or credentials. While this statute asserts that it in no way affects those health care professionals that are properly trained, it is important to note that those properly trained health care professionals who are not psychologists licensed under the strictures of the Board may only use these instruments under the supervision of such a licensed psychologist.

In accordance with this statute, the Indiana State Board of Psychology has compiled a list of 318 psychological instruments whose "complexity and design" meet the standard imposed by the statute. This proposed list was disseminated to the SW, MFT and MHC Licensure Board in late August 1998, in accordance with the statute. Shortly after receiving a copy of this list, the SW, MFT and MHC Licensure Board contacted the Fair Access Coalition on Testing ("FACT") and ATP in order to coordinate lobbying efforts to petition against the inclusion of many useful and prevalent instruments on this list.

Noting the urgency of this lobbying effort, ATP contacted its members and requested that they write to oppose the inclusion of their tests on this list within the 60 day period, which expired October 24, 1998. ATP Executive Director William G. Harris included within this ATP Legislative Alert his own letter of opposition, attacking the fundamental premise of the statute and calling it misguided. He pointed out that "doctorate-level psychologists, like other mental health professionals, must obtain additional training and experience before reaching a level of professional competency in the administration and interpretation of specific psychology tests. As such, there is no professional (or business) reason to distinguish between the psychology profession and other mental health professions on the use of psychology tests."

While the Indiana State Board of Psychology has not yet contacted ATP in response to its letter of opposition, William G. Harris has been invited by Governor Frank O'Bannon of Indiana to testify on this issue when hearings are held. ATP will continue to monitor the situation.

Vollman defends America's Labor Market Information System ("ALMIS") as a catalyst for opportunity, not competition

"Helping people find jobs -- historically, that is the mission of the U.S. Department of Labor. But, the way in which this traditional role is being carried out is changing, because the Internet is changing the way we do business in America and around the world. And the business of government is no different, nor is it immune to change," stated James Vollman, Associate Assistant Secretary, Employment and Training Administration, in his keynote address to attendees of the ATP General Meeting held August 15, 1998 at the Hotel Nikko San Francisco.

As if to illustrate his point, Vollman proceeded to dispense with the traditional podium set-up of a keynote speaker as he darkened the room, logged onto the Internet and, through the use of an onsite computer and overhead projector, gave his audience a tour through what he termed a "virtual career shopping mall" -- otherwise known as America's Labor Market Information System ("ALMIS"), of which Vollman has been the principal federal architect.

Vollman went on to liken the ALMIS Network to "a mall with four anchor stores: America's Job Bank ("AJB"), America's Talent Bank ("ATB"), America's Career Information Network ("ACINet") and America's Learning eXchange ("ALX").

To further place the ALMIS network, (www.doleta.gov/almis/almisnew2.htm) in context, he explained that this "virtual career mall" was a brainchild created when two federal programs, The Employment Service System and the Job Training Partnership Act, merged under one roof to create the One Stop Career Center Initiative. This initiative has resulted in the creation of ALMIS, as well as the network of nationwide One Stop Career Centers, which Vollman reported should number 2,000 early in the next millennium.

The One Stop Career Center system is designed to help individuals take control of their own careers, Vollman said. "Instead of (Employment Service) staff deciding what kind of training you are qualified for, you can be self guided to the training you want or need." At the same time, Vollman noted what he said were opportunities for test publishers within the new system, including on-line assessments or proctored computer-based testing at One Stop Centers, with test results or Skill Certificates being cataloged in an individual's personal account along with his/her resume. He also noted that the system can be used by those seeking to analyze job market trends for the purposes of creating new assessments or training programs.

In responding to questions from the audience, Vollman admitted that there are still arguably weak areas in the system. Security for both job seekers and employers was raised as a concern. Vollman said individuals tapping into the system currently have access to approximately 2,800 employer web sites and 750 private employment listings. But very little is done to screen these listings. At the same time, any individual with access to a computer can respond to these listings. Vollman put it in the context of a "buyer beware" situation -- with both sides needing to do adequate research and screening before agreeing to a personal meeting.

He also admitted that self assessments and self-guided career searches are not always an adequate replacement for professional career counseling. "There will still be a market for taking an in-depth skills assessment that is interpreted by a counselor. The most one can hope for (through self assessment) is to get in the ballpark," he said.

Vollman also stated that though there were no immediate plans to place assessments online, he could not say for sure that they would not appear within the next decade. However, he did add that they had no plans to place "anything licensed" on the Internet.

Vollman addressed a criticism from the audience that the federal government, through ALMIS, was encroaching on private business by competing with the existing career information delivery system industry.

Vollman defended the initiative which, he said, is merely carrying out a traditional role in an untraditional manner, and providing not competition, but opportunity.

"We (the federal government) are in three businesses. We provide the check to the unemployed, we lubricate the labor market so that matches are made (between the unemployed and employers) and we help bridge the gap between job skills and job needs. All these are traditional roles. What's changing are the structures and business models...products that were sold five years ago, you can't give away now. Two years ago you could have sold a resume service. Now you can't give it away. There have to be higher level products. Those will be up to you (test publishers) to come up with...eventually one of you may decide that giving away a test is a good marketing ploy, because there are other, better products to sell."

ATP focus on...

European Test Publishers Group ("ETPG")

The information in this article was submitted by Ian Florence of NFER-NELSON

Q: How did the European Test Publishers Group come about?

A: In 1991, test publishers from Germany, France, the United Kingdom, Finland, Sweden, Denmark, The Netherlands, Spain and Italy met informally to discuss the likely implications of increased European harmonization for the testing industry and its related professions. Since then, the group has held an annual conference and taken booth space every year at the American Psychological Association convention and, usually, at one other major international meeting.

Q:What has happened this year?

A: At the eighth annual conference, the ETPG was formally incorporated, with its aims defined as "research and development in the field of psychometric assessment and its related areas, public relations, helping to prevent test misuse, creating awareness about test copyright in the interest of authors, users and clients." The group now has a formal budget and structure. The first president is Pekka Heiskari of Psykologien Kustannus Oy in Helsinki. In addition, new members are being considered from Portugal and Slovakia.

Q: How is the Group different / similar to the U.S. group, the Association of Test Publishers ("ATP")?

A: The similarities are in the issues that concern us: test copyright, test quality, test use and misuse, government policy towards testing. As, I think, with the U.S. group, European publishers are looking for a vehicle to communicate with professional and scientific organizations. There are, however, a number of differences: 1.) The membership consists of one representative from each language group. This aids very frank discussion of the issues, with no problems of member competition. 2.) The harmonization of Europe means that the issue of test adaptation and translation is a very important one, as is that of the recognition of qualifications from different countries. Europe now has a very mobile but multi-lingual work force, creating very specific problems. 3.) The legislative threat to testing is less developed than in the U.S. 4.) The European Group has only a small budget for its conference and exhibitions and has no dedicated staff.

Q: Is the European Test Publishers group a cartel?

A: No. This accusation has been made but there is no commercial activity involved, no exchange of individualized market data and no harmonization of commercial activity. All members are free to act commercially in their own interests and form alliances outside the group.

Q: What does the future hold?

A: We feel that links with other organizations - ATP being one - are a key issue. The market for tests is becoming global and it's important that the supply side influences developments in this area.

The second crucial area is the effect of on-line delivery on all aspects of testing - from copyright protection to ensuring that tests are delivered in a valid, reliable, standardized manner.

**For more information on the European Test Publishers Group, contact Ian Florence at NFER-NELSON,
Darville House, 2 Oxford Road East, WINDSOR, Berkshire, SL4 1DF.
Phone: +44.1753.858961
Fax: +44. 1753.856830
Email: ianflorence@nfer-nelson.co.uk**

Publisher: The Association of Test Publishers
[Board of Directors](#) [Division Chairs](#) [Officers](#)

TEST PUBLISHER is published by the Association of Test Publishers. All correspondence regarding editorial content should be sent to Test Publisher c/o [Lauren Scheib](#), 2995 Round Hill Road, York, PA 17402. Telephone: 717.755.9747 Fax: 717.755.8962

TEST PUBLISHER is distributed with the understanding that it is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Reproduction in whole or part without written permission is prohibited.